United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLEE

76-1115,

76-1116

To be argued by
IRA LEE SORKIN

United States Court of Appeals

FOR THE SECOND CIRCUIT

Nos. 76-1115, 76-1116

UNITED STATES OF AMERICA,
Appellee,

—v.—

JAMES E. CORR, III, and ROGER DRAYER,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES OF AMERICA

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UNITED STATES OF AMERICA,

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BRIEF FOR THE UNITED STATES OF AMERICA

Preliminary Statement

James E. Corr, III, and Roger Drayer appeal from judgments of conviction entered on March 5, 1976, in the United States District Court for the Southern District of New York, after a six week trial before the Honorable Edward Weinfeld, United States District Judge, and a jury.

Indictment 75 Cr. 803, filed on August 13, 1975, charged James E. Corr, III ("Corr"), Roger Drayer ("Drayer") and six other defendants—R. Bruce Buschbaum, Barry Drayer, Barry Chajet, Allen Kern, William Murphy and Richard Sobel—with conspiring to violate the federal securities anti-fraud and mail fraud provisions, and with 41 substantive offenses, including the sale of unregistered securities, fraud in the offer and sale of securities, fraud in connection with the purchase and sale of securities, mail fraud, filing a false bank loan applica-

tion, perjury and false statements before the United States Securities and Exchange Commission ("Commission").

Count	*Defendants*	*Description of Violation Charged*	*Statutes Violated*
1	All defendants and six unindicted co-conspirators	Conspiracy to violate securities laws and to commit mail fraud	Title 18, United States Code, Section 371
2 through 9	Corr	Sale of unregistered securities	Title 15, United States Code, Section 77(e)
10	Allan Kern	Fraud in the offer and sale of securities	Title 15, United States Code, Section 77q(a)
11	Corr and Allan Kern	Fraud in the offer and sale of securities	Title 15, United States Code, Section 77q(a)
12 through 22	All defendants	Fraud in connection with the purchase and sale of securities	Title 15, United States Code, Section 78j(b)
23 through 33	All defendants	Mail fraud	Title 18, United States Code, Section 1341
34	Corr	Filing a false bank loan application	Title 18, United States Code, Section 1014
35	Corr	Perjury	Title 18, United States Code, Section 1623
36 through 42	Corr	Making false statements to the Commission	Title 18, United States Code, Section 1001

On November [illegible], 1975, Indictment 75 Cr. 1059 was filed charging Corr with one count of perjury and 11 counts of making false statements to the Commission.* Thereafter, Indictments 75 Cr. 803 and 75 Cr. 1059 were consolidated for trial by Judge Weinfeld.

The trial of Corr, Drayer and a third defendant, Barry Drayer (brother of Drayer), commenced on December 9, 1975.** On January 15, 1976, the jury returned guilty verdicts with respect to Corr and Drayer on all the counts that had been submitted to it.*** A mistrial was declared with respect to Barry Drayer on January 16, 1976, when the jury reported that as to him it was unable to reach a verdict.

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* Prior to trial Judge Weinfeld dismissed Counts 35 through 42 of Indictment 75 Cr. 803 without prejudice. Indictment 75 Cr. 1059 was then filed which charged Corr with the same count of perjury as alleged in Indictment 75 Cr. 803, and six other counts alleging false statements before the Commission which were the same as alleged in Indictment 75 Cr. 803. The five remaining counts alleged additional false statements before the Commission.

** Prior to trial four other defendants pleaded guilty to one of the offenses charged in Indictment 75 Cr. 803: R. Bruce Buschbaum (Count 1); Allan Kern (Count 1); Barry Chajet (Count 1); and Richard Sobel (Count 14). The fifth defendant, William Murphy, pleaded guilty to a superseding information (75 Cr. 1173) charging him in one count with fraud in connection with the purchase and sale of securities. Each of the five testified for the Government at the trial below. Following the trial, on March 5, 1976, Judge Weinfeld imposed on these defendants varying terms of imprisonment of from three to six months—with the exception of Murphy, as to whom the imposition of sentence was suspended.

*** Prior to trial Counts 3 and 5 of Indictment 75 Cr. 1059 were dismissed. At the conclusion of the Government's case, Judge Weinfeld dismissed Counts 18, 20 and 26 of Indictment 75 Cr. 803 as to both defendants, and Count 8 of Indictment 75 Cr. 1059.

On March 5, 1976, appellants were sentenced by Judge Weinfeld. Corr was sentenced to a total of two and one-half years in prison and fined $10,000.* Drayer was sentenced to two years' imprisonment pursuant to Title 18, United States Code, Section 3651, the execution of all but four months of which was suspended, and was placed on probation for two years.

Corr and Drayer are free on bail pending appeal.

Statement Of Facts

A. Synopsis

The Government's evidence, adduced through hundreds of documents and over 40 witnesses—including five of the eight named defendants and numerous co-conspirators—overwhelmingly established the existence of a massive scheme to manipulate the market price of Jerome Mackey's Judo, Inc. stock. The scheme was devised and dominated from start to finish by Corr and resulted in losses of millions of dollars to the investing public and to brokerage houses.

The proof at trial showed that in 1970 and 1971 Corr began working for Jerome Mackey's Judo, Inc. ("Judo") with responsibility for the areas of mergers, acquisitions and financing. In the fall of 1971, Corr and Judo entered into written contracts whereby Corr would

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* On Indictment 75 Cr. 803 Corr was sentenced to imprisonment for two-and-one-half years on each of Counts 1-9, 11, 23-25 and 27-33; and to two years imprisonment on each of Counts 12-17, 19-22 and 34. On Indictment 75 Cr. 1059, Corr was sentenced to two-and-one-half years' imprisonment on each of Counts 1-2, 4, 6-7 and 9-12. All sentences were to run concurrently with one another.

continue to render essentially the same services to the corporation.

Also during the fall of 1971, Corr sought to persuade various individuals to participate in Judo's first offering, which had become effective on August 16, 1971. Two such individuals were James Diamond and Dorsey Buttram, Oklahoma businessmen and friends of Mackey, whom Corr agreed to guarantee against loss if they purchased Judo in the underwriting; they subsequently did so.

In late 1971 and early 1972, Corr induced R. Bruce Buschbaum, a trader at Sterling, Grace & Co., Inc. ("Sterling Grace") to begin making a market in Judo, as well as to begin retailing the stock to customers of Sterling Grace. Although Buschbaum did not begin immediately retailing the stock, he did undertake to make a market in that stock; at the same time he kept Corr informed of who was buying and selling Judo in the market, and permitted Corr to direct him where to buy and sell Judo among the market makers and retail houses. Corr was also instrumental in referring accounts to Buschbaum for the purpose of buying Judo.

In early 1972, Corr began to recommend Judo to other brokers, including Richard Sobel and Daniel Salant of CBWL-Hayden, Stone, Inc., and Stanley Fingerhut of Fingerhut & Co., where Drayer was employed.

In approximately late February, 1972, when Corr began recommending the purchase of Judo to brokers and investors, he began a pattern of selling Judo securities through accounts he opened in his own name and in the names of others—Kathleen Keogh, Joseph Sonberg and Raymond Corr. Corr controlled all these accounts.

In approximately April, 1972, Corr met Barry Chajet, the trader at Morgan, Kennedy & Co., Inc. ("Morgan

Kennedy"), who at that time was "shorting" Judo. Corr convinced Chajet to go "long" in Judo and, as was the case with Buschbaum, Corr began to direct buy and sell orders to and from Chajet.

In approximately May, 1972, Corr offered a payoff to Sobel and Salant, in the form of an option to purchase Judo securities, in return for an effort on their part to induce their customers to purchase Judo securities.

In or about this period Corr began to hold meetings in the corporate apartment at 400 E. 56th Street, New York, New York, for the purpose of persuading brokers to induce their customers to buy Judo. Throughout this same period, Corr was continuing a pattern of selling vast amounts of Judo securities into the market through his own account and accounts he opened in the names of others. These meetings continued throughout the spring, summer and fall of 1972.

In the fall of 1972, Corr, who then needed funds to pay for the purchase of some Judo securities, filed a false and forged bank loan application at the Underwriters Bank & Trust Co., using the name of Kathleen Keogh. The proceeds of this loan went into Corr's account.

In the summer of 1972, while Buschbaum and Chajet were trading Judo at Corr's direction, Buschbaum and Corr persuaded William Murphy, a trader at the firm of Piper, Jaffrey & Hopwood, Inc. ("Piper Jaffrey"), to begin trading Judo. Subsequently, Murphy participated in "parking" thousands of shares of Judo between himself and Buschbaum and, on one occasion, between himself and Chajet. In sum, Murphy "parked" Judo securities on four separate occasions, all for the purpose of keeping

Judo securities off the market and thereby preventing the depression in market price that would accompany any glut in the supply of the stock.

In October, 1972, Corr and Allan Kern, operations manager at Morgan Kennedy, agreed to "swap" Judo securities held by Corr and his associates for securities of Health Delivery Systems Inc. ("Health") held by the customers of Morgan Kennedy. When Corr failed to pay for 20,000 shares of Health obtained in the "swap," he and Kern attempted to persuade Raphael Ventura, a South American investor, to purchase the stock. When this failed, Corr induced Ventura and Dr. Issac Cohen, Ventura's cousin, to put up $100,000, $80,000 of which was put up by Ventura and guaranteed against loss by Corr. As a result of the "swap" and the sharply depressed market price of Judo immediately thereafter, Morgan Kennedy and its customers lost a total of approximately $1 million.

At the time of the "swap," it was necessary to maintain the market price of Judo securities. Accordingly, Corr instructed Buschbaum, a market maker, to keep the "high bid" in Judo, and instructed Drayer to create demand in Judo by placing orders for approximately $250,000 worth of Judo securities which subsequently were not paid for. Corr also placed so-called "wooden tickets" for a total of approximately $175,000 at Sterling Grace and Margolis & Co. By the time the "wooden tickets" were entered, Corr had received into his bank accounts over $1.1 million from the sale of Judo securities through his own account and accounts he had opened in the names of others. At the same time Corr advised others not to sell their shares of Judo.

In late 1972 and up through May, 1973, Corr, using his own funds as well as money supplied by Ventura,

Cohen and Dr. Lester Van Ess, a friend of Cohen, purchased hundreds of thousands of dollars of Judo securities through accounts in names other than his own, in an apparent attempt to maintain demand for, and hence the market price of, Judo securities.

When the Commission and Grand Jury commenced investigations into the trading of Judo, Corr repeatedly lied to the Commission and once to the Grand Jury for the purpose of concealing his illegal activities.

Drayer did not testify or call any witnesses in his defense. Corr did testify, called several witnesses in his behalf and introduced numerous exhibits.

Essentially Corr denied he was a participant in, much less the architect of, any scheme to manipulate the market price of Judo stock. He flatly denied having employed any of the fraudulent devices attributed to him by the Government's proof. Thus, for example, he denied having bribed Salant and Sobel to push Judo stock; having entered and caused others to enter "wooden tickets"; having used nominee accounts to conceal his own trading activity; having directed any market maker in Judo to become "high bid"; having intentionally required certain brokers to "park" Judo stock; having submitted a false loan application to a bank; and having made false and perjurious statements to federal authorities investigating the trading in Judo.

In contrast, Corr asserted that while he had been employed by Judo, he had never been a "control" person of that company; that his recommendations to others to buy Judo's stock were based on his good faith belief in the company's prospects; that, in substance, the precipitous rise, and subsequent crash, of over 30 points in the price of that company's stock during the pertinent period

were not attributable to any misconduct of his; and that his sales of large portions of his own holdings in Judo during this period were made in good faith simply to provide a supply of such stock to those members of the public who wanted it. Notwithstanding all this, Corr maintained, somewhat inconsistently, that in the final analysis his conduct was motivated by a desire to gain control of Judo.

B. The Government's Case

1. Corr Becomes Associated With And Employed By Jerome Mackey's Judo, Inc. And Acquires Investment Stock In The Company.

In the latter part of 1970, Henry Jerome Mackey, the president of Judo, met Corr. (Tr. 70-71).* On January 9, 1971 Corr entered into an employment contract with Judo wherein for $500 per week he agreed to assist Judo in its franchise program, secure and put together Judo schools in Florida and work on acquisitions for the company. (Tr. 72-74; GX 6A-6X; Corr X G). On August 16, 1971 a registration statement of Judo became effective, and by November 21, 1971 the company had sold 104,700 shares to the public. (Tr. 70; Corr X A).

On November 23, 1971, Corr entered into another contract with Judo wherein he agreed to assist Judo

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* "Tr." refers to pages of the trial transcript; "GX" to Government Exhibit; "Br." to the appellants' briefs and "Corr X" and "Drayer X" refer to the exhibits introduced into evidence by the respective defendant-appellant.

in mergers, acquisitions, public relations and financing. (GX 3). Corr had previously told Mackey that he (Corr) was experienced in these areas. (Tr. 101).* Corr later invested in Judo by purchasing from Mackey 125,000 shares of restricted Judo stock at $1.25 per share. (GX 2).**

2. Corr Guarantees Buttram And Diamond Against Loss.***

Mackey had known two Oklahoma businessmen, Dorsey Buttram and James Diamond, prior to meeting Corr and had introduced them to Corr prior to the effective date of the offering. (Tr. 83-84).

Just prior to the offering's closing on November 23, 1971, Corr telephoned Buttram in Mackey's presence. After the conversation, Corr told Mackey that he (Corr) had guaranteed Buttram against any loss the latter might suffer by reason of his purchase of Judo in the public offering. (Tr. 87-90). Corr had previously told Buttram in person that if Buttram purchased Judo in the offering and informed Corr when he wanted to sell, Corr would guarantee him against loss. (Tr. 1139-40). Likewise, Corr guaranteed Diamond against loss should he purchase Judo in the offering. The guarantee in both cases was in the form of securities of Dusenberg Corp., which Corr put up and which could be sold by Buttram and

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* Counts 2 through 9 of Indictment 75 Cr. 803 charged that in 1972 Corr, while a "control person" of Judo, sold unregistered shares of that company's stock.

** The agreement was entered into in June, 1972, but backdated to February, 1972. (Tr. 110-12).

*** Counts 1 and 2 of Indictment 75 Cr. 1059 charged that Corr lied to the Grand Jury and the Commission, respectively, when he denied guaranteeing Buttram and Diamond against loss.

Diamond if they sustained losses in Judo securities. (Tr. 90). In this connection, Corr sent to Diamond 30,000 shares of Dusenberg Corp. (Tr. 869-72; GX 21D-F), and Dusenberg Corp. stock powers, which had been witnessed by Mackey. (Tr. 92-94; GX 21A-C).*

3. Corr Asks Buschbaum To Make A Market In Judo And Chajet To Reverse His Short Position.

Buschbaum had been employed as a trader ** by the brokerage firm of Sterling Grace when Corr first spoke to him about Judo in November, 1971, and asked him to retail Judo securities to the customers of Sterling Grace. (Tr. 397, 400-02).***

In early January, 1972, Corr asked Buschbaum to make a market in Judo securities because, as Corr explained, he (Corr) would have a vested interest in Judo and would be a substantial buyer and seller of Judo stock. (Tr. 404). After checking with Robert Lebo, the managing partner and executive officer of Sterling Grace, Buschbaum went "into the sheets" and began making a market in Judo. (Tr. 399, 404).****

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* In November, 1972, Corr admitted to Allan Kern that he had guaranteed Buttram and Diamond against loss. (Tr. 2260-61). Corr's admission was made in connection with another guarantee against loss Corr made to Raphael Ventura, which is discussed *infra*, p. 31.

** A trader in securities is one who maintains markets in securities, *i.e.*, he buys and sells securities as a principal, acting for and splitting profits with his firm.

*** Retail business merely refers to purchasing and selling securities for customers of the firm.

**** The "sheets" refer to the Pink Sheets published by the National Quotation Bureau and reflect the bid and ask prices of the market makers for securities traded over the counter.

In approximately April, 1972, Chajet, a marketmaker at Morgan Kennedy, was "shorting" Judo. (Tr. 1173-74).* In May, Chajet was introduced to Corr by an individual named Larry Cohen and was informed that Corr was a substantial stockholder and that he (Chajet) should get to know the principals and people connected with the company. (Tr. 1177). At a meeting among Corr, Chajet and Leroy Goldfarb ** at Judo's corporate apartment, at 400 E. 56th Street in Manhattan, Corr explained that he was involved with Judo and that the company was doing well with acquisitions and mergers and had new franchises on the horizon. Corr further explained that Chajet should not be "shorting" Judo because, in part, he (Corr) had the "box in the stock";*** he knew where most of the stockholders were located; and because 60% or 70% of the outstanding shares were in the hands of either himself, friends, relatives or people he felt he controlled. He demonstrated this by showing Chajet a list of Judo's stockholders. (Tr. 1180-81, 3028-29). Several weeks after his meeting with Corr, Chajet covered his "short" position in Judo securities and went "long" in the stock.**** (Tr. 1181-82).

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* "Shorting" is a term used to describe the act of selling securities "short." A "short" sale is a sale of securities which the seller does not physically have in his possession. When it comes time to deliver the securities, the seller must purchase the securities in order to effect delivery.

** Cohen had met Corr and Leroy Goldfarb, an unindicted co-conspirator, in early 1972 (Tr. 3026-27).

*** "Box in the stock" was defined by Chajet to mean a situation where an individual has physical possession of a sufficient number of a company's shares so as to make it impossible for market makers to deliver the securities. This produces a "thin" market in the securities and reduces liquidity. (Tr. 1191-92).

**** To be "long" in a particular stock means that the firm or individual has an inventory in the securities.

4. Corr Directs Orders In Judo Securities To And From Buschbaum And Chajet, And Assists Them In "Parking" Judo.

In December, 1971, when Buschbaum first bought Judo stock, Corr asked him for the first time which brokerage firms were buying and selling Judo in the open market. (Tr. 406; GX 10(a)). During 1972, Corr asked Buschbaum approximately 100 times who the buyers and sellers of Judo were. (Tr. 407). As the major market-maker in Judo, Buschbaum necessarily knew which firms were buying from and selling to him. (Tr. 408). On January 13, 1972, Corr began "directing orders" to and from Buschbaum. (Tr. 419-20).* From this date through October 19, 1972, Corr regularly "directed" orders to and from Buschbaum. (Tr. 420, 423, 427, 430, 435, 437, 440, 442, 444, 449-51, 452, 458, 465-66, 469-70, 476-80, 486, 488-90, 492-93, 508, 510).** From aproximately June through September, 1972, Corr also "directed" Judo transactions to and from Chajet. (Tr. 1202, 1204, 1210-12, 1214-17, 1220-22, 1224-25, 1227, 1229).

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* Buschbaum defined a "directed order" as a pre-arranged order wherein a third person arranges for the buyer of securities to contact the seller. (Tr. 419-20). Chajet defined a "directed order" as one where a third party intervenes between two individuals, or where a third party pre-arranges a transaction between brokerage firms. (Tr. 1206). In either situation, Corr was the third person.

** Buschbaum estimated that 85% of his transactions in Judo during 1972 that involved accounts he serviced at Sterling Grace were the result of directed orders by Corr; and that approximately 60% of the transactions in Judo between his firm and other brokers were directed by Corr. (Tr. 564-65). He also estimated that from December 6, 1971 through the end of October, 1972 he engaged in 700 or 800 transactions in Judo securities. (Tr. 412-13).

During the above-mentioned period Buschbaum and Chajet, with Corr's assistance and knowledge, "parked" Judo securities.* (Tr. 521-22, 526-27, 1225, 1241-42). William Murphy, a trader at Piper Jaffrey in Mineapolis, Minnesota, also participated in "parking" Judo securities. (Tr. 1824). Murphy, who had been introduced to Corr over the telephone by Buschbaum, was told by Corr to keep an eye on Judo. Thereafter, in June 1972, Murphy purchased Judo for the first time. (Tr. 1831). Corr urged Murphy to find buyers and develop interest in Judo; told Murphy that the earnings would be improved; that a merger of Judo and a telephone company would take place; and that Murphy should find out which companies had not delivered Judo.** (Tr. 1833-35).

Buschbaum first asked Murphy to "park" Judo overnight because Buschbaum's holdings of Judo exceeded the permissible dollar limit imposed on him by his firm, and he could not get in touch with Corr.*** (Tr. 1836).

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* Both Buschbaum and Chajet defined "parking" as a situation where a broker, unable to keep securities in his trading account, ostensibly sells the securities to another firm, with the understanding that the securities will be purchased back by the ostensible seller before the settlement date. (Tr. 521-22, 1225). The effect of "parking" is simply to keep shares from being sold into the market; it is an artificial device to avoid depressing the market price. (Tr. 522).

** By learning who had not delivered Judo securities, Corr would be able to determine who was "short" the stock. With this knowledge he could get brokers to demand delivery of the stock and thereby cause the price to go up when the short sellers tried to cover their short position. This is known as "squeezing the shorts."

*** Buschbaum had been prohibited by his firm from purchasing more than a certain dollar amount of Judo and holding the securities in the firm account. (Tr. 427-28). Corr knew of this limit and had periodically, during 1972, directed other

[Footnote continued on following page]

Buschbaum had also asked Murphy to hold Judo stock for him for several days. (Tr. 521, 526, 1842, 1844, 1847, 1852). To relieve further the Sterling Grace position in Judo, Buschbaum also "parked" stock with Lewis Rowady, a broker at the brokerage firm of Financial House of Detroit. (Tr. 528-29).

Similarly, Chajet, also at Corr's instructions, was involved in "parking" Judo with Murphy and Buschbaum. (Tr. 1225-26, 1241-42).

5. Corr's Nominees: Kathleen Newberry, Joseph Sonberg And Raymond Corr.*

a. Kathleen Newberry

Kathleen Newberry was married to Corr from 1961 to 1970. Her maiden name was Keogh. (Tr. 1064). After she divorced Corr she continued to reside at Corr's house located at 5992 50th Street South, St. Petersburg, Florida, until July 14, 1972, when she moved out and Corr gave her a sum total of about $20,000. (Tr. 1069-70).

During 1971 and 1972 Corr had Newberry fill out four or five new account cards for brokerage firms and give them back to him.

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brokers and customers to Buschbaum for the purpose of reducing the firm's trading position in Judo. (Tr. 431-32, 440, 446, 458, 469-70, 487-89, 512, 516, 523, 525, 531). Indeed, Corr had told Buschbaum to buy all the Judo stock he could for Sterling Grace (Tr. 440) and that he (Corr) would guarantee that firm account in Judo against loss. (Tr. 446, 494).

* Counts 6 and 7 of Indictment 75 Cr. 1059 alleged that Corr's testimony before the Commission that Newberry and Sonberg "maintained" certain brokerage accounts through which Judo was purchased and sold and that there were no disbursements of funds from these accounts was false since, in truth, it was Corr who opened and maintained the pertinent accounts from which funds were disbursed to bank accounts in Corr's name.

The accounts, however, were maintained by Corr and not Newberry. (Tr. 1087; GXs 64, 68).* At no time did Newberry enter any orders to purchase or sell Judo securities during 1971 and 1972, and when she did receive confirmations of purchase and sale in the mail, she gave them to Corr or Corr's brother, Raymond Corr. (Tr. 1073-75).

Prior to moving from Corr's home on July 14, 1972, Newberry endorsed checks made payable to her and gave them to Corr.** (Tr. 1076). The checks were then deposited into Corr's account at the First Commercial Bank of St. Petersburg, Florida ("First Commercial Bank"). (GXs 183A-E; 184A-C). Other brokerage records in accounts opened in the name of Newberry reflected additional transactions in Judo securities. (GXs 62A-C, 63, 65, 69A-B, 71). Generally, the proceeds from the sales of Judo securities were deposited in Corr's accounts at either the First Commercial Bank or the Underwriters Bank & Trust Co., New York, New York ("Underwriters Bank").*** (GXs 38, 182A-C). The amount of money deposited in Corr's bank accounts, as a direct result of sales of Judo securities effected through brokerage accounts in Keogh's name, totaled $345,317.09. (GX 255).

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* According to one of the account cards (GX 68), Newberry lived at 400 E. 56th Street. In fact, she never resided at this address. (Tr. 1090). Rather, this was in fact the corporate apartment of Judo, where Corr resided in 1972 when he stayed in New York. (Tr. 103).

** These checks were drawn against Fingerhut & Co. and represented the proceeds of sales of Judo securities from a "Keogh" account. (GXs 183B, 184B, 255).

*** Keogh never had "delivery versus payment" accounts at either of the two banks. (Tr. 1099). A "delivery versus payment" account is one whereby the bank pays for the securities ordered by the customer from the customer's account when the securities are physically delivered to the bank.

b. Joseph Sonberg

Joseph Sonberg, Corr's half-brother, had gross income during 1972 of approximately $8,000. (Tr. 1401, 1403). During 1972, Sonberg, like Keogh, also signed brokerage firm new account cards at Corr's instructions. (Tr. 1407).

During 1972 Sonberg did not enter orders for the purchase or sale of Judo securities at the firms of Sterling Grace, Morgan Kennedy and Halle & Stieglitz; nor did Sonberg receive any checks or cash from any of these firms. Further, he did not give any instructions on the "delivery versus payment" accounts opened in his name at the First Commercial Bank and the Underwriters Bank.* (Tr. 1413-15, 1424).

Sonberg did not recall seeing the monthly statements of Morgan Kennedy; whatever monthly brokerage statements he did receive he gave to Corr.** (Tr. 1429-31; GX 224A-C). The amount of money deposited in Corr's bank accounts, as a direct result of sales of Judo securities effected through brokerage accounts in Sonberg's name, totaled $87,600.62. (GX 255).

c. Raymond Corr

Several years ago Raymond Corr ("R. Corr"), Corr's natural brother (Tr. 1495), opened an account at the brokerage firm of Walston & Co.; he there entered orders to buy and sell Judo securities at Corr's instructions and

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* Indeed, Sonberg never filled out the new account card in his name at Halle & Stieglitz. (Tr. 1421-22; GX 70).

** A check for $39,850 drawn against Morgan Kennedy and payable to Joseph Sonberg was deposited into Corr's account at the Underwriters Bank. (GX 46, 46B, 46E). Corr received other checks into his account which were payable to Sonberg. (GX 72).

paid for the securities with Corr's funds. (Tr. 1498-1501).* When such securities were sold at Corr's instructions, R. Corr would deposit the check in his account and then draw a check payable to Corr; or Corr, who had discretionary power over R. Corr's account, would take the funds out of the account. (Tr. 1501; GXs 177, 179, 182b, 182d-e). In this fashion, a total of $123,971.61 (GX 255), representing the proceeds of sale of Judo securities through R. Corr's account, was deposited in Corr's bank accounts.

6. Corr Offers A Payoff To Sobel And Salant.

In February, 1972, Richard Sobel and Daniel Salant, registered representatives for the firm of CBWL-Hayden, Stone, Inc.** (Tr. 1875, 1986-87), first met Corr, who spoke to them about Judo, its projected earnings and franchises. (Tr. 1875-76, 1987-90). Shortly after the meeting, Salant and Sobel, who shared their brokerage commissions, began soliciting their customers to purchase Judo securities. (Tr. 1876-77, 1990).

In aproximately May, 1972, Sobel and Salant sold some Judo securities for their customers. Immediately thereafter they received a telephone call from Corr, who invited them to his apartment at 400 E. 56th Street. At the apartment Corr asked them why they were selling Judo. They replied that they could not get in touch with him and wanted to get out. Corr touted Judo as a great company, remarking that he knew everything about the company. He showed them the transfer sheets in Judo, which listed the investors who held that stock—including customers of Salant and Sobel—as evidence that he, Corr,

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* R. Corr also had accounts opened in his name at other brokerage houses. (GXs 134, 149).

** Salant was named as an unindicted co-conspirator.

had a handle on this stock. He then offered Sobel and Salant each an option to purchase 500 shares of Judo for $5 per share, on condition that they solicit their customers to purchase Judo. (Tr. 1877-81, 1993-95).

As a result of the option offer, Sobel and Salant, at Corr's urging, solicited their customers on numerous occasions to purchase Judo securities. They did not tell those customers, however, that Corr had offered them an option to purchase Judo to do so. (Tr. 1995-97).*

7. The Meetings At 400 E. 56th Street And Corr's Control Of Judo Trading

During 1972 Corr conducted numerous meetings in the Judo corporate apartment at 400 E. 56th Street with various brokers, traders and investors, at which he touted the soundness of investing in Judo securities and boasted of his control of the trading in those securities. For example, from approximately May, 1972 through September, 1972, Chajet went to the apartment ten or fifteen times and there met with all the marketmakers in Judo, as well as Salant and Sobel and representatives from Sterling Grace. (Tr. 1182-88).

On several such occasions Chajet heard Corr say that he (Corr) controlled the "box in the stock", (Tr. 1999-2001), and on one occasion Corr produced a shoe-box which contained Judo certificates which belonged to some friends or relatives. (Tr. 1193). At these meetings Corr made optimistic predictions as to what Judo would earn

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* Sobel and Salant later asked Corr for the opportunity to exercise the option. Corr eventually told Salant that, since Sobel owed Corr money, Sobel had agreed to take over Corr's obligation in this matter. (Tr. 1887-89, 1995).

and where he thought the price of the stock was going to go, namely, $25, $50 and $100 per share. (Tr. 1195).*

In October, 1972, after Judo had dropped sharply in price, Chajet again went to the apartment where he met Corr, Kern, and Irwin Rudnet, another principal of Morgan Kennedy. Corr asked Chajet if he would become "high bid" in Judo by swapping positions with Sterling Grace, who had been high bid. (Tr. 1250-53).** At another meeting in October, 1972, Corr, while reviewing the transfer sheets, told Chajet that there was a "short position on the street" and that they would "squeeze the shorts" and get the price of the stock back up. (Tr. 1255-57).

At his New York apartment, in the summer of 1972, Corr also made representations of his knowledge of the identity of each Judo shareholder, the location of each share of that stock and his ability to control trading in the same to both Stephen Wien, a principal at the brokerage firm of M. S. Wien & Co. (Tr. 2931-36),*** and Larry

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* Count 10 of Indictment 75 Cr. 1059 charged that Corr's statement to the Commission, that he did not believe he had ever made price projections, was false.

** Earlier, in the summer of 1972, both R. Corr and Sobel had heard Corr instruct Buschbaum to be high bid in Judo. (Tr. 1552-53, 2002-03). Count 11 of Indictment 75 Cr. 1059 charged Corr with falsely stating to the Commission that he had never instructed Buschbaum to remain "high bid" in Judo.

*** Wien also testified that under certain circumstances an individual could control the float in an over the counter stock. These circumstances, as they pertained to Corr's control of the float in Judo, were: (1) Corr in daily contact with the two principal marketmakers, Buschbaum and Chajet; (2) Corr asking the two principal marketmakers to be high bid in the stock; (3) Corr parking Judo securities between the two principal marketmakers; (4) Corr directing orders to and from the marketmakers and retail houses; (5) Corr meeting with marketmakers and registered representatives in the apartment; (6) Corr advising people when to sell or

[Footnote continued on following page]

Cohen, a former employee at Morgan Kennedy and the person who had introduced Chajet to Corr. (Tr. 3030).* Cohen also observed transfer sheets of Judo in the apartment and heard Corr direct Chajet and Buschbaum to remain "high bid" in Judo securities and direct firms to buy, sell or remain "high bid" in Judo. (Tr. 3031-36).

During the period from March, 1972, through October 20, 1972, when Corr was holding these meetings, the market price of Judo rose from approximately $3 per share to approximately $34 per share. (GX 257).**

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hold Judo securities; (7) Corr asking registered representatives and marketmakers what their position was in Judo; (8) Corr buying and selling Judo securities in his own name and in accounts in the names of others; (9) Corr having access to the trading position of the two principal marketmakers; and (10) Corr being advised by the registered representatives of their purchases and sales for customers. (Tr. 2980-84).

* Numerous others were present in the apartment on various occasions when Corr touted or spoke of his control of Judo trading: R. Corr (Tr. 1553-55); Kern (Tr. 2257-58); John Hayes (Tr. 1339); Jarvis Goldsand (Tr. 2079-80); Buschbaum (Tr. 551-52); Salant (Tr. 1876); Harry Bradley (Tr. 1938, 1952-53); and Diamond (Tr. 879-81).

** It should be noted that during 1972, when Corr was touting Judo and advising people to purchase the stock, he sold through his account and in accounts in the names of R. Corr, Joseph Sonberg and Kathleen Keogh over $1.1 million in Judo securities. (GX 255). An example of Corr's conduct of selling when he was advising other people not to sell is reflected in the testimony of Martin Leschman and Dr. Sheldon Sonkin, two acquaintances of Dr. Dennis Ormond, Corr's brother-in-law. In October, 1972, when Corr was selling for his own accounts and those of his friends, he was advising Leschman and Sonkin not to sell and indeed told them he was holding his own stock and could not sell. (Tr. 379-80, 1161-63).

8. The False Loan Application*

Until November, 1972, John Coyne was employed as administrative vice-president of the Underwriters Bank. In this capacity he met Corr in the spring or early summer of 1972. (Tr. 2801-02).

In early September, 1972, Corr informed Coyne that he (Corr) needed $40,000 for a transaction in Judo securities. Corr was informed, however, that such a loan would be beyond the line of credit he had at the bank and that the bank was then under fiscal examination by the state and Coyne did not want to create further problems. Corr was then advised by Coyne and Charles Smith, the president of the bank, that a short term loan could be made through other people.** Corr replied that he could work the transaction through Kathleen Newberry and Joseph Sonberg. (Tr. 2806-08). Coyne then gave to Corr, in blank, a Regulation U form which required a statement of the purpose for which one was borrowing money. Corr subsequently returned the document on September 14, 1972, signed in the name of "Kathleen Keogh". (Tr. 2808-09; GX 40). Thereafter, the loan was extended to the account of Kathleen Keogh; a subsequent letter over the purported signature of Kathleen Keogh authorized the transfer of those funds to Corr's account. (Tr. 2809-10; GX 66).*** Upon receiving this authoriza-

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* Count 34 of Indictment 75 Cr. 803.

** Smith was called as Corr's witness and corroborated Coyne's testimony that it was Coyne and Smith who suggested that Corr utilize another member of his family to secure the loan. (Tr. 3478).

*** Keogh (Newberry) did not have an account at the bank. (Tr. 1099). On the contrary, securities were delivered to the bank against payment in the name of Keogh and Sonberg and at Corr's instructions transacted through the loan department

[Footnote continued on following page]

tion, Coyne directed that the proceeds of the loan be credited to Corr's account. (Tr. 2820; GX 44).* When the loan was repaid prior to the 30 day due date, the rebate of interest was credited to Corr's account. (Tr. 2815, 2817).

In fact, however, Keogh never participated in obtaining, or authorized anyone else to obtain, in her name a loan from the Underwriters Bank. (Tr. 1105-07; GX 44).**

Rather, in the fall of 1972, Jean Goldfarb *** met with Corr at the Underwriters Bank (Tr. 2909) and there, at Corr's request, signed the name "Kathleen Keogh," and declared in writing that the purpose of the loan was "to refurbish a home." In persuading Jean Goldfarb to sign the documents, Corr said that sending them to Kathleen Keogh in Florida would have taken too many days. (Tr. 2911-14). After Goldfarb signed the documents, he gave them back to Corr. (Tr. 2915-16).

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through Corr's account. Coyne neither met nor spoke to either Keogh or Sonberg. When securities were delivered out from the bank against payment, the entire transaction went through the loan department where Corr had loans outstanding. The securities in the names of Keogh and Sonberg were used as collateral against Corr's loans. (Tr. 2802-05).

* The loan in Keogh's name was for $20,000; another $20,000 loan under the same circumstances was extended in the name of Sonberg. (Tr. 2811).

**Not only was the loan application false in that Keogh never signed it, submitted it or authorized anyone to sign her name, but also in that the form stated that the purpose of the loan was "to refurbish a home". (GX 40). In fact, Keogh never took out a loan of $20,000 to refurbish a home. (Tr. 1102).

*** Jean Goldfarb's husband, Leroy Goldfarb, was named as an unindicted co-conspirator.

9. The Stock "Swap": Judo For Health Delivery Systems, Inc.

Morgan Kennedy had underwritten a security known as Health Delivery Systems, Inc. ("Health"). (Tr. 2238-2245). In June or July 1972, Corr told Kern that he (Corr) had been watching Health, liked the company and asked Kern if Morgan Kennedy would like to invest in Judo. (Tr. 2245-46).

In October, 1972, Corr and Kern met in Kern's office and agreed that Kern would invest in Judo, and Corr would invest in Health. They agreed to do so by swapping equal dollar amounts of Judo and Health.* Thereafter, Kern purchased for his firm 40,000 shares of Judo at approximately $12.50 per share, which the firm then retailed to its customers at $14 per share.** In so doing, Kern withheld certain information from the firm's customers. The Judo stock sold came from Corr's accounts, accounts controlled by Corr (in the names of Keogh and Sonberg), and accounts of Corr's friends and brother-in-law.*** In turn, Corr and the above people

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* Corr was motivated to "swap" Judo for Health principally by the fact that Judo had received a letter (GX 130) dated September 8, 1972 from the National Association of Securities Dealers threatening to delist quotations in the trading of that stock from the National Association of Securities Dealers Automated Quotations ("NASDAQ") because of the limited distribution of Judo's shares among too few shareholders. The "swap" was designed to aid in placing shares of Judo in the hands of at least 300 persons —the minimum needed to maintain a listing on NASDAQ.

** The actual price the firm paid was $13 per share. (Tr. 1238; GXs 20df-20du).

*** Corr placed the orders for Keogh, Sonberg and Ormond. (Tr. 2249-51). Corr sold from his own account 13,500 shares, which represented over 1% of the issued and outstanding securities at the time.

purchased about 50,000 shares of Health. (Tr. 1233-34; 2247-52; 2485-86). At the time of the "swap" Corr told Kern that he (Corr) was a Vice President of Judo and that he had a sizeable position both in Judo and in the floating stock of Judo. (Tr. 2253). The "swap" was effected during the period of from October 11, 1972 to October 17, 1972.* (Tr. 1238). As a result of the "swap," Morgan Kennedy and its customers lost approximately $1 million dollars when the price of Judo plummeted immediately thereafter.

10. Drayer, Corr And The "Wooden Tickets"**

a. H. Hentz & Co., Inc.

Drayer was employed at Fingerhut & Co., Inc. during 1972. (Tr. 438). In April, 1972, Drayer introduced Sobel to Alan Dante, whom Drayer identified as his friend. (Tr. 2010, 4494).

In September, 1972, Alan Dante opened an account named Jenny Associates at the brokerage firm of H. Hentz & Co., Inc. ("H. Hentz").*** (Tr. 4493; GX 95). Drayer, in an affidavit filed with the brokerage firm of Dominick & Dominick, Inc. ("Dominick"), listed himself as the sole general partner of Jenny Associates. (GX 107).

On October 13, 1972, Dante placed an order to purchase 2,000 shares of Judo at approximately $14 per share

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* It should be noted that at the time Corr was selling out his position in Judo and those of his friends, he and Drayer were entering "wooden tickets" at several firms, *infra*, p. 25.

** A "wooden ticket," in general, is an order to purchase securities which are subsequently not paid for.

*** The account was serviced by Barry Drayer, Drayer's brother. Prior to opening the account Drayer told Barry Drayer that the Jenny Associates account would be opened and that Dante would be the general partner. (Tr. 4492, 4497). Drayer had also opened a personal account at H. Hentz. (GX 96).

through Barry Drayer ("B. Drayer"). (Tr. 4292, 4496; GX 97). On October 16, 1972, Dante placed a second order for 3,000 shares of Judo at approximately $14 per share, also through B. Drayer. (Tr. 4496; GX 98). Subsequent to the second order, B. Drayer called Drayer, and the latter said he was aware of the order and that it was okay. (Tr. 4496). The shares were subsequently not paid for by Jenny Associates. (Tr. 2197). B. Drayer informed Charles Horgan, the compliance officer at H. Hentz that the funds to pay for the shares would be coming in from the Underwriters Bank and that his brother and Corr were involved in the account. (Tr. 2198). Thereafter, when the funds were not delivered, H. Hentz sold the 5,000 shares to Morgan Kennedy at a loss. (Tr. 1264, 2199, 2269; GX 99).*

After the sell-out, Corr and Drayer paid H. Hentz $10,000 to reimburse the firm for the loss. (Tr. 2202-04; GX 101). The firm, however, did not recover its entire loss. (Tr. 2205). In November 1972, B. Drayer told Chajet that Drayer had purchased the 5,000 shares in the name of Jenny Associates, that Drayer could not pay for it, and that Drayer and Corr were trying to make arrangements to pay for the stock. (Tr. 2267-68). B. Drayer later admitted that Corr was behind this "wooden ticket" and others. (Tr. 2272).

b. Merrill, Lynch, Pierce, Fenner & Smith, Inc.

On October 17, 1972 Drayer opened an account in the name of Jenny Associates at Merrill, Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS") through John Hayes, a registered representative of MLPFS. (Tr. 1326-28; GX 93A).

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* It is important to note that Jenny Associates did not have an account at the Underwriter's Bank, (Tr. 2823), but that Corr did.

That same day, Drayer entered an order through Hayes for 2,000 shares of Judo securities, at approximately $14 per share. Payment was to be made against delivery at the Underwriters Bank. (Tr. 1329; GX 93C). Several days later Drayer told Buschbaum that he had purchased Judo securities at H. Hentz and MLPFS. (Tr. 554). When the 2,000 shares were subsequently delivered to the bank, they were "DK"ed.* (Tr. 1332). Thereafter, Hayes attempted unsuccessfully to contact Drayer (Tr. 1332-33); and subsequently the securities were sold at a loss to MLPFS and Hayes. (Tr. 1338; GX 93D).

c. Dominick & Dominick, Inc.

During 1972 Jarvis Goldsand ("Goldsand") was employed as a registered representative in the Chicago office of Dominick. (Tr. 2071). In early 1972 Goldsand met Corr; in late April or early May of that year, they spoke to one another about Judo. (Tr. 2073). Thereafter, Goldsand began to solicit purchases by his customers of Judo securities. (Tr. 2074-75). In July, 1972, Goldsand met Buschbaum. (Tr. 2076-77).

On October 19, 1972, Buschbaum, Corr, Kern, Chajet, Irwin Rudnet, and possibly Sobel and his partner Daniel Salant, met at Corr's apartment at 400 East 56th Street to determine what was happening to the market in Judo securities. (Tr. 549-50).** After the meeting Drayer asked Buschbaum how much stock would have to be purchased to raise the market price of Judo, which had dropped. Buschbaum replied that it would take 10,000 shares. (Tr. 553).

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* The term "DK" means "Don't Know"—*i.e.*, the bank "didn't know" of the transaction, refused delivery and would not pay for the securities. (Tr. 1332).

** This meeting and the others held at Corr's apartment are discussed, *supra*, p. 19.

The next day Buschbaum told Corr that Drayer had attempted to place an order at Sterling Grace for 10,000 shares of Judo securities in the name of Jenny Associates, but the managing partners had refused to permit Buschbaum to take the order. Buschbaum then directed Drayer to Goldsand in Chicago, whom Buschbaum had called and told that Drayer wanted to open an account. (Tr. 554-57).

Sometime prior to October 19, 1972, but after Buschbaum spoke to Goldsand, Goldsand spoke to Corr about Drayer. Corr represented that Drayer could pay for the Judo stock that Drayer sought to purchase. (Tr. 2088-84).

On October 19, 1972, Drayer opened an account with Goldsand under the name of Jenny Associates (Tr. 2089; GX 104a),* and immediately entered an order to purchase 10,000 shares of Judo at approximately $15 per share. (Tr. 2085; GX 105A-E). At the time of the purchase, Drayer instructed Goldsand to deliver the securities, against payment, and to the bank where Drayer said Jenny Associates had an account. (Tr. 2093).**

The securities were "DKed" and not paid for by the bank. Goldsand eventually contacted Drayer, who stated that he was trying to arrange payment through Corr. (Tr. 2100-02).

In October, 1972, William Crowe, general counsel to Dominick, spoke to Drayer, who acknowledged that the order for 10,000 shares had been placed. Drayer also acknowledged his indebtedness to Dominick and requested time to obtain funds to pay for the securities. (Tr. 2868-

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* On the back of the new account card were the instructions "delivered to the Underwriters Bank & Trust Company, New York, New York, attention John Coyne."

** Jenny Associates, however, did not have an account at the bank. (Tr. 2823).

70; GX 107). Crowe then met Corr, who identified himself as a friend of Drayer and stated that he (Corr) would like to help Drayer with the problem at Dominick. When Crowe suggested that Dominick would have to liquidate the account, both Corr and Drayer asked Dominick not to do so, and to give them more time to pay.* Eventually it was agreed that upon the instructions of Corr and Drayer the shares were to be delivered to the First Commercial Bank. The securities were delivered, but never paid for (Tr. 2881-82; GXs 110-11), and eventually they were sold out at a loss to Dominick. (Tr. 2882; GX 115A-E).

d. Margolis & Co.

Sam Margolis, the president of Margolis & Co., an over-the-counter brokerage firm, first heard of Judo through William Murphy. Thereafter, in September or October, 1972 (Tr. 1755-6), Margolis met Corr, who opened an account at Margolis & Co. (Tr. 1765-66; GX 128).

In late October, 1972, Corr entered an order with Margolis & Co. to purchase for his account 3,000 shares of Judo at approximately $14 per share. (Tr. 1771-73; GX 125A-B).** The shares were to be delivered against payment to Corr's account at the First Commercial Bank. Although the stock was properly delivered on two occasions, it was never paid for by the bank. Subsequently, Margolis sold out the stock at a loss. (Tr. 1773-75, 1777-78; GX 126A-E).

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* Had Dominick liquidated the account, the sales of Judo securities into the market would have drastically depressed the price.

** The address on the duplicate confirmation was the Judo corporate apartment at 400 E. 56th Street.

e. Sterling, Grace & Co., Inc.

On October 17, 1972, Corr instructed Buschbaum to purchase 7,700 additional shares of Judo at approximately $14 per share for his (Corr's) account. Buschbaum had by then purchased thousands of shares of Judo on an "as of" basis and therefore could not purchase the stock in his trading account.* The securities were never paid for by Corr. (Tr. 544-45).**

f. CBWL-Hayden, Stone, Inc.

In April, 1973, pursuant to B. Drayer's recommendation, Sobel and Salant opened an account for Dr. Lester Van Ess at CBWL-Hayden, Stone. (Tr. 2015; GX 227). On April 26, B. Drayer placed an order to purchase for the account of Van Ess 2,000 shares of Judo. (Tr. 2017; Drayer XD). These securities were delivered against payment to the First Commercial Bank. (Tr. 2017).

On May 7, 1973, Corr placed another order to purchase 2,000 shares of Judo, at approximately $10 per share, for Van Ess' account. (Tr. 1895, 2020; Drayer

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* "As of" is a term used to describe a transaction wherein securities are purchased on one day but, for the purposes of bookkeeping, the contract date is listed as of another date. It will be recalled that notwithstanding the limits imposed by Sterling Grace on Buschbaum's trading in Judo, Buschbaum, at Corr's instructions, was told always to be a buyer of the stock. Consequently, his trading position was always in excess of what the firm could handle, and he had always to rely upon Corr to reduce the trading account. By putting orders in "as of" a certain date, Buschbaum could make it appear that he was not in excess of his trading limits.

** It is significant that the "wooden tickets" were placed by Corr and Drayer during the same time Corr was transacting the "swap" of Judo for Health through Morgan Kennedy. Obviously, the "wooden tickets" had the effect of maintaining the market price of Judo securities while Corr was selling off his own stock.

XD). The securities were delivered against payment to the First Commercial Bank, but were "DKed" and not paid for by the bank. (Tr. 1896, 1900, 2022).

11. Corr, Lester Van Ess And The "South American Connection."

Dr. Isaac Cohen was born in Chile and now practices medicine on Long Island. He first came to the United States in 1969 in an exchange program with Dr. Lester Van Ess. Through Van Ess, Cohen met B. Drayer, through whom he opened a brokerage account at H. Hentz. (Tr. 2277-79).

In the spring of 1972, B. Drayer learned from Cohen that Cohen's cousin Raphael Ventura, who still lived in Chile, was interested in making investments in the United States. (Tr. 2280-81).

In October, 1972, Corr failed to pay for 10,000 shares of Health, which had been delivered against payment by Morgan Kennedy to Corr's bank, First Commercial Bank, as part of the "swap." (Tr. 2259-60; 2490-91).

Shortly thereafter, B. Drayer told Cohen of a deal he had for Ventura, in which Ventura would buy stock which in turn would be bought back from him within a period of one to two weeks at two dollars per share profit. (Tr. 2280-82).

Cohen called Ventura, told him of the deal and Ventura came to the United States for a meeting at the offices of H. Hentz with B. Drayer, Cohen, Corr, Irwin Rudnet and Kern. Corr offered Ventura the opportunity to purchase approximately 20,000 shares of Health, which Corr promised to re-purchase from Ventura in a couple of weeks for a two or three dollar per share profit to

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* The securities Corr tried to sell Ventura were those he had refused to pay for at the First Commercial Bank. (Tr. 2262-63).

Ventura.* Ventura rejected this, but accepted Corr's proposal that he (Ventura) give Corr $80,000 with which to invest, which sum Corr would guarantee by putting up $100,000 in other securities. (Tr. 2285-86). Ventura's account would be opened at H. Hentz, serviced by B. Drayer and the profits, if any, would be split 50-50 between Corr and Ventura. (Tr. 2288-89). After the meeting, Ventura opened accounts at the Bank of America for a total of $80,000. (Tr. 2291-92; GX 242).

In early October, 1972, R. Corr became a registered representative at the brokerage firm of Raymond, James and Associates, Inc. ("Raymond, James") in St. Petersburg, Florida. (Tr. 1726). In late 1972, B. Drayer opened accounts at Raymond, James in the names of Ventura and Jose Cohen* (Tr. 1557-58; GX 139, 141) —neither of whom he had ever met. B. Drayer also opened an account in the name of Van Ess. (Tr. 1558; GX 140).

Thereafter, B. Drayer and Corr placed purchase orders for the accounts. Further, R. Corr received letters purportedly from Ventura and Jose Cohen, authorizing R. Corr to accept orders for the account. (Tr. 1559-61; GXs 201-203). The latter documents, however, were neither prepared nor signed by Ventura or Jose Cohen (Tr. 2317-18). The letters were then given to Dante Stefano, an employee of the First Commercial Bank. (Tr. 2707-08); GXs 186, 193). An account was also opened at the bank by Van Ess. (GX 208).

During approximately December, 1972, through May, 1973, securities purchased pursuant to B. Drayer's orders were delivered by R. Corr into the First Commercial Bank for the accounts of Van Ess, Jose Cohen and Ventura. R. Corr, at the direction of Corr and B. Drayer,

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* Jose Cohen, who like Ventura resided in Chile, is the brother of Dr. Isaac Cohen. (Tr. 2295).

instructed Stefano to charge Corr's account. (Tr. 1562-66; GXs 216A-216AS). Corr had previously persuaded Dr. Isaac Cohen to put up approximately $20,000 for the account of Jose Cohen. (Tr. 2299-3000). This sum was used to open up Jose Cohen's account at the First Commercial Bank. (GXs 195A-195B). Corr, after meeting Van Ess, persuaded him to put up approximately $90,000, after advising him to open a brokerage account at Raymond, James and a bank account at the First Commercial Bank.* (Tr. 2563-76).

During this period from approximately December, 1972, through May, 1973, while Corr was buying Judo securities through the above accounts, the market price of Judo went from approximately $3 per share to approximately $11 per share. (GX 258).

C. The Defense Case

Drayer did not testify or call any witnesses in his behalf.

Corr introduced certain business records pertaining to numerous brokerage accounts of his and Kathleen Newberry, called Charles Smith, Raymond Gould, Robert Lebo and Lewis Braff in his behalf and testified in his own defense—from all of which the following emerged.

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* Accordingly, the total amount of money put up by Van Ess, Ventura and Jose Cohen was approximately $200,000—all of which they lost. However, it was Corr who in fact paid for the balance of the approximately $250,000 worth of additional Judo stock ostensibly purchased through the accounts of Ventura, Van Ess and Jose Cohen at Raymond, James, with delivery against payment to the respective accounts at the First Commercial Bank. (GX 256).

1. The Inception And Early Days Of Corr's Relationship With Mackey And Judo

Corr met Mackey in August, 1970, and by early 1971 was retained by Judo to assist it to obtain financial backing, develop a franchise program and acquire other business entities. In that capacity, Corr brought several proposed acquisitions to Mackey, who rejected them. (Tr. 3446-66).

In May, 1971 Mackey requested Corr's help in resolving certain problems which had arisen in connection with Judo's first effort to distribute its stock publicly. As a result, Corr flew with Mackey to Oklahoma to help Mackey persuade Buttram and Diamond—two businessmen who had lost money in previous Mackey ventures—to invest in Judo. Corr acknowledged that after Buttram and Diamond had agreed to purchase Judo stock, he had sent them each certain of his certificates of Dusenberg stock. He asserted he had done so solely to evidence his good faith and establish his standing as a man of means; and he denied that he had guaranteed either purchaser against loss if the purchaser agreed not to sell his Judo unless he (Corr) told him to. (Tr. 3537-45, 3548-56, 3559-60).

In early 1972, Corr invested approximately $300,000 in Judo franchises he purchased and relocated from Florida to New York, and in connection therewith assumed liabilities of another $300,000. (Tr. 3505-06). In June, 1972, but as of February, 1972, Corr purchased 125,000 shares of Judo from Mackey at $1.25 per share. (Tr. 3508-11; GX 2).

In May, 1972, Corr proposed to Harry Bradley, president of Telephone Sales & Services ("TS & S"), a telephone interconnect company, that TS & S be acquired by or merged into Judo. Mackey met with Bradley and

entered into an agreement in principle for Judo to acquire TS & S. (Tr. 3515-17). Thereafter, Corr called 28 or 30 marketmakers to tell them about the acquisition. (Tr. 3519-20). The acquisition, however, was never consummated.* (Tr. 3528).

Notwithstanding Corr's growing responsibilities, pursuant to contracts of employment, for the conduct of Judo's affairs, and his equity interest in Judo and certain franchises, Corr maintained at trial that it was Mackey who made the corporate decisions regarding franchise locations, the hiring and compensation of employees, school budgets, contracts with advertising agencies and the selection of the board of directors. (Tr. 3532-34). Support for this view was provided by Ray Gould, general manager of Judo from 1971 through 1973, who testified, in substance, that he did not know of anyone in the company to make a corporate decision other than Mackey. (Tr. 3984-85).

2. Corr And The Public Market In Judo

In January or February, 1972, Corr asked Buschbaum if he or Sterling Grace could give him some assistance in making a market in Judo. Thereafter, Corr met with representatives of Sterling Grace, who advised him that prior to making a market in Judo, they wished to have him become a beneficial owner of Judo stock and to effect a wider distribution of the company's shares. (Tr. 3635-37). Corr then purchased 8,100 shares of Judo on Feb-

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*On August 11, 1972, Value Line financial service published an article stating that the acquisition had been consummated. Corr testified before the Commission that he called the author of the article, Russell Wayne, and told Wayne the article was not accurate. Wayne, however, testified at trial that Corr never called him. (Tr. 2757-66). Corr's contrary testimony before the Commission was the basis of the false statement charge contained in Count 12 of Indictment 75 Cr. 1059.

ruary 29, 1972; and he reached an agreement with Mackey to purchase an additional 125,000 shares of Judo because he wanted some ownership interest in the company for which he was working 15 hours a day. (Tr. 3643-44, 3647-48).*

Corr began not only buying but selling Judo stock in 1972 because Sterling Grace was creating a demand for Judo in other people, including brokers, investors and clients, and the firm would come to him as a source of supply for that stock.** Corr explained that his conduct in 1973 was aimed at protecting his investment and that of his family and friends. (Tr. 3653).

In 1972 Buschbaum asked Corr to obtain for him, and Sterling Grace, customers interested in trading in Judo. Corr did later direct 10 or 12 such customers to Sterling Grace and Fingerhut & Co., since they could there obtain a better price than elsewhere. (Tr. 3658-59).

While Corr acknowledged he thought it highly unusual that Buschbaum remained "high bid" in Judo for five or six weeks during this period, he denied he ever told Buschbaum to remain high bid unless it related to an individual, isolated, special order for Corr, not carte blanche. (Tr. 3671, 3674-75).***

During this period, 95 percent of Corr's purchases of Judo were prompted by notification from Buschbaum that such stock was available. In May or June, 1972, Corr

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* Corr testified he had first purchased Judo in December, 1971, but sold the 1,100 shares soon thereafter because he had serious doubts regarding Mackey's credibility. (Tr. 3638-40).

** Lebo, the managing partner of Sterling Grace during 1972, was called as Corr's witness and on cross-examination emphatically denied any such arrangement with Corr on behalf of Sterling Grace. (Tr. 4013-17).

*** Lebo testified that he never heard Corr tell anyone that they should be "high bid" in Judo. (Tr. 4004).

reached an understanding with Sterling Grace that if they n eded to buy or sell shares of Judo he would be available to help the firm. He assisted the firm with their capital problems by giving the principals at Sterling Grace undisputed authority in his absence to buy $100,000 worth of securities for his account. (Tr. 3678).

Corr denied he had ever offered a payoff to Sobel and Salant to push Judo stock (Tr. 3756-57); and denied that Murphy had ever told him that he (Murphy) had "parked" Judo securities or that Buschbaum had ever told him (Murphy) to "park" Judo securities in the future. He asserted that it was not until October, 1972, that he first learned that Buschbaum and Murphy were "parking" stock. (Tr. 3753-55).

3. Corr's Control Of The Keogh And Sonberg Accounts

Keogh and Corr had been divorced in 1970 and as part of the divorce settlement he gave her $5,000 which, pursuant to her request, he invested for her. (Tr. 3769-70). Additionally, Corr compensated Keogh for work she performed in 1971 for Judo by giving her 5,000 shares of the company's stock. (Tr. 3771-72). Subsequently, Corr bought Judo stock for Keogh (Newberry) in the open market and supplied stock from her account, as if it were his, when needed. (Tr. 3775). Keogh also opened a custodial account at the First Commercial Bank, but this account, too, was handled by Corr and charged to his account. (Tr. 3778-79).

Corr gave Keogh money whenever she needed it, with the total amount approximating $20,000 in cash. In late 1972 and early 1973, when Keogh told Corr she wished to make a clean break with him, Corr told her she had assets of over $200,000. (Tr. 3821, 3830).

With regard to Sonberg, Corr promised him $20,000 for the work he performed for Judo. (Tr. 3833). Sonberg invested $14,000 in Self-Defense Industries, Inc., a Florida corporation that operated Judo franchises. (Tr. 3835). Thereafter, Corr opened accounts in Sonberg's name and purchased for him between February, 1972, and May, 1973, approximately 10,000 shares of Judo on a discretionary basis. (Tr. 3838). During this period Corr never withdrew money from Sonberg's accounts to give it to Sonberg. (Tr. 3840-41). He did, however, give Sonberg about $160,000 through November and December, 1975, as reimbursement for all the harassment and intimidation Sonberg had suffered during the federal investigation. (Tr. 3840-42).

4. The Underwriters Bank Loan Application

Charles Smith, the president of the Underwriters Bank first suggested to Corr that he use the names of Keogh and Sonberg to obtain a $40,000 loan from the bank, to be collateralized by Corr. (Tr. 3803-05). In adopting the suggestion, Corr instructed the bank to send letters regarding the loan to Keogh and Sonberg, although he had no knowledge of whether Keogh and Sonberg ever received the necessary documents. (Tr. 3806-08). Corr denied that he had ever instructed Jean Goldfarb to sign the relevant Regulation U form and denied that he had even seen that form prior to the beginning of trial. (Tr. 3809-10, 3817-18).

5. The "Wooden Tickets"

Corr learned at the end of October, 1972 that Drayer had placed an order to buy Judo through H. Hentz, for which Drayer was unable to pay, when he (Corr) spoke to Drayer and Drayer asked for his (Corr's) help in paying for the stock. (Tr. 3846-50). Thereafter, Corr gave Drayer a check for $10,000 for that purpose. (Tr. 3864; GX 101).

Corr first learned of the Dominick "wooden ticket" in a conversation with Goldsand in late November, 1972 (Tr. 3866, 3870); and Corr denied that he ever knew that a "wooden ticket" had been placed at MLPFS. (Tr. 3885).

Corr asserted that he had no knowledge of the unpaid for orders at Sterling Grace for purchases of Judo in his account until after the orders had already been executed (Tr. 3886); and he flatly denied that he had entered any orders to purchase Judo securities at Margolis & Co. (Tr. 3887).

6. Van Ess, Ventura And Cohen And Corr's Attempt To Gain Control Of Judo

Corr first heard of Issac Cohen, Jose Cohen, Lester Van Ess and Raphael Ventura in late October or early November, 1972, from B. Drayer, who told him that Issac Cohen had very wealthy South American relatives desirous of investing in the United States. (Tr. 3890-91). According to Issac Cohen, Ventura did not understand American capital markets and wanted "knowledgeable ethical American partners to participate with him in these investments." (Tr. 3895). It was thereafter agreed that Ventura would put up $80,000 for investment and Corr would have discretion over the funds. (Tr. 3896-97). Corr, in turn, agreed to put up $100,000 in marketable securities so that Ventura "would be protected on his original $80,000 investment." (Tr. 3898). There was no reference, however, to a guarantee against loss. (Tr. 3919). Thereafter, Ventura opened accounts at H. Hentz and Raymond, James. (Tr. 3901-02).

Subsequently, Corr, Harry Bradley, Ventura and the Cohens agreed to try and take control of Judo because

Mackey did not want to do anything with the company.* Cohen agreed to call Ventura and ask him for an additional $100,000 for investment toward that end. (Tr. 3933-34). Further, B. Drayer told Corr that he (B. Drayer) had received authorization to buy up to $100,000 worth of Judo securities for Ventura (Tr. 3937), but that Ventura could not get the funds out of Chile and was working on alternative methods of doing so. (Tr. 3938). In mid-February Issac Cohen told Corr that Ventura had authorized purchases of Judo of up to $250,000 in an effort to gain control. (Tr. 3940). Corr agreed to advance the funds for Ventura out of his own account, and also made loans to Van Ess. (Tr. 3940, 3943). Corr had further conversations with Van Ess, Cohen and B. Drayer in February and March, 1973 with respect to acquiring more shares for the purpose of gaining control of Judo (Tr. 3942). B. Drayer advised Corr that as soon as Ventura was able to leave Chile, he (Corr) would get his money back. (Tr. 3948). Although Corr repeatedly asked Cohen for an accounting for the purpose of getting repaid (Tr. 3954), he was in fact never repaid any of the money he had advanced. In the end, all of Corr's efforts to buy from Mackey or otherwise obtain control of Judo were fruitless. (Tr. 3955).

D. The Government's Rebuttal Case

In rebuttal, Howard Bergtraum, an attorney formerly with the Commission and now employed by the law firm that used to represent Judo (Tr. 4906-07), testified that at no time during 1972 did Corr tell him that he (Corr) was selling Judo securities for himself and others. Bergtraum denied that he had told Corr it was legally permissible for Corr to sell shares of Judo; and denied that Corr had ever asked him if it would be legally permissible to

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* Count 4 of Indictment 75 Cr. 1059 alleged that Corr falsely testified to the Commission that Ventura and Cohen wanted to take control of Judo.

sell. Indeed, Bergtraum testified that he had told Corr that, in his opinion, Corr was a control person of Judo. Corr was never told by him that he (Corr) could sell his shares in order to effect distribution of Judo securities in the open market. (Tr. 4907-10).

It was stipulated by Corr and the Government that if Peter Davis were called he would testify substantially the same way as had Bergtraum. (Tr. 4919).*

ARGUMENT

POINT I**

Judge Weinfeld's Exclusion Of Or Limitation On Certain Irrelevant Or Incompetent Evidence Proffered By Corr Was Entirely Correct.

Corr maintains that he was denied the right to present an effective defense because of certain adverse evidentiary

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* Corr had testified on cross-examination that "My attorney told me I was not a control person. Mr. Davis told me I was not a control person." Corr testified further that Bergtraum also never told him that he (Corr) was a control person. (Tr. 4166-67).

** Since Corr does not seek to overturn on appeal his convictions on Counts 1, 2, 9, and 11-12 of Indictment 75 Cr. 1059, for which he was sentenced to two and one-half years in prison (the maximum sentence he received on any count), and since Judge Weinfeld imposed all sentences in this case to run concurrently, this Court may, in its discretion, decline to review the issues raised by Corr on this appeal and affirm his conviction. *Barnes* v. *United States*, 412 U.S. 837, 848 n.16 (1973); *United States* v. *Neville*, 516 F.2d 1302, 1307 n.6 (8th Cir.), *cert. denied*, 423 U.S. 975 (1975); *United States* v. *Keller*, 512 F.2d 182, 185 n.8 (3d Cir. 1975); *United States* v. *Bath*, 504 F.2d 456, 457 (10th Cir. 1974); *Ethridge* v. *United States*, 494 F.2d 351 (6th Cir.), *cert. denied*, 419 U.S. 1025 (1974); *United States* v. *McLeod*, 493 F.2d 1186, 1189 n.1 (7th Cir. 1974).

rulings of Judge Weinfeld. Examination of the pertinent law and facts, however, makes clear that Corr's claims are completely without merit. Judge Weinfeld granted Corr extremely wide latitude in his presentation of evidence and cross-examination of Government witnesses, and in doing so consistently acted within recognized boundaries of proper judicial discretion.

One of the most consistently reiterated basic principles of law is that the court which hears the evidence is best suited to rule on its admissibility. *Hamling* v. *United States*, 418 U.S. 87, 124-25, 127 (1974); *NLRB* v. *Donnelly Garment Co.*, 330 U.S. 219, 236 (1947); *United States* v. *Kahn*, 472 F.2d 272, 281 (2d Cir.), *cert. denied*, 411 U.S. 982 (1973). Questions of the relevancy of proffered evidence are to be determined in the discretion of the trial court, the exercise of which may be overturned on appeal solely upon a showing of a clear abuse of that discretion. *Hamling* v. *United States*, *supra*, 418 U.S. at 124-25; *United States* v. *Catalano*, 491 F.2d 268, 273 (2d Cir.), *cert. denied*, 419 U.S. 825 (1974).

Similarly, the admission of evidence on cross-examination and the extent of its scope are matters for the trial court's discretion. *Alford* v. *United States*, 282 U.S. 687, 694 (1931); *United States* v. *Green*, 523 F.2d 229, 237 (2d Cir.), *cert. denied*, 44 U.S.L.W. 3358 (U.S. Dec. 15, 1975); *United States* v. *Pacelli*, 521 F.2d 135, 137 (2d Cir. 1975). A trial judge's determination of the proper scope of cross-examination is to be treated with "great deference" by appellate courts, clear abuse of discretion being the appropriate test for reversible error. *United States* v. *Jenkins*, 510 F.2d 495, 500 (2d Cir. 1975). This is particularly true where it appears from the record that notwithstanding the exclusion of individual items of evidence the cross-examination has nonetheless been "full and searching," *United*

States v. *Kahn*, *supra*, 472 F.2d at 281; or where further questioning will sidetrack the trial by involving the court in collateral issues which may cause undue delay or confusion. *Hamling* v. *United States*, *supra*, 418 U.S. at 127; Rule 403, Federal Rules of Evidence.

With these fundamental principles in mind, it becomes readily apparent that in none of the specific rulings about which Corr complains was there even a scintilla of impropriety or abuse of discretion on the part of Judge Weinfeld.

A. Judge Weinfeld Properly Excluded A Portion Of The Proffered Testimony Of Lewis Braff

Corr sought to introduce the testimony of Lewis Braff, and certain financial summaries (Corr X EH) prepared by Braff on the basis of oral and documentary evidence for the most part already adduced, in order to prove that as a result of his, Corr's, trading and investments in Judo securities and franchises during the period of the conspiracy and for some months thereafter, he had suffered losses of over $1.1 million. This evidence of loss, Corr argued, was probative of the good faith that marked his conduct. In determining what he called a close question, Judge Weinfeld decided to permit Corr to prove through Braff and his financial summaries, for whatever evidence of Corr's good faith they might provide, the computation of the loss suffered by Corr by reason of his trading in the stock of Judo during the period of the conspiracy. (Tr. 4414). Judge Weinfeld declined, however, to permit Corr to prove through Braff, as evidence of Corr's good faith, any losses allegedly sustained by Corr as a result of (1) events that occurred subsequent to June, 1973 and the termination of the charged conspiracy; (2) investments by

Corr in Judo franchises, as distinct from Judo securities; and (3) the failure of Ventura, Cohen and Van Ess to repay to Corr loans which, according to Corr's testimony, he had made to them, the proceeds of which he had used to purchase shares of Judo stock for their accounts. It is these latter three limitations about which Corr complains. His assertion of error, however, is groundless.

Taking the limitations in reverse order, it is crystal clear that any loss sustained by Corr as a result, according to his own testimony, of unrepaid loans to others to enable them to purchase Judo can in no sense be reconstituted as a wilful and intentional investment by Corr in Judo, indicative of his good faith. While to be sure the Government's proof tended to show that it was Corr, with his own funds and for his own beneficial interest, who was trading in Judo through the accounts of the alleged loan recipients, Corr's testimony was to the contrary and Judge Weinfeld properly declined to allow Corr to have it both ways. In any event, Corr himself had already testified to the $400,000 loss he allegedly had sustained as a result of his loans to the South Americans (Tr. 4411-12) and, in summation, Corr's counsel argued the alleged fact of that $400,000 loss to the jury as evidence of Corr's good faith. (Tr. 5136-37).

Braff's restatement of Corr's testimony of his losing investments in Judo franchises was properly excluded by Judge Weinfeld because it was wholly irrelevant to the alleged offenses and the Government's case—all of which concerned the manipulation of the price of Judo's stock and had nothing whatever to do with any alleged misconduct pertaining to the wholly separate Judo franchises unowned by Judo, the spawning corporation. Moreover, Corr had already testified (Tr. 4412-13), and his counsel later argued in summation (Tr. 5107), that

Corr had lost $300,000 as a result of his investment in Judo franchises originally located in Florida.

Finally, Judge Weinfeld properly excluded any evidence of losses Corr allegedly sustained by reason of events subsequent to the termination of the conspiracy —*i.e.*, subsequent to the resumption of trading in August, 1973 when the price of Judo fell drastically and Corr sustained a large paper loss. No such losses—sustained after the end of the conspiracy and after the Commission and other federal authorities had commenced an investigation of Judo, could be probative in any respect of Corr's putative good faith.

Corr was simply not precluded by Judge Weinfeld's ruling from making, through counsel, repeated arguments to the jury that Corr's investments and trading in Judo were marked by good faith and reflected an effort to gain control of the company. (Tr. 5107, 5136-37, 5139, 5206, 5210).

B. Judge Weinfeld Properly Excluded The SEC Release

Corr attempted to introduce in evidence a copy of an SEC release, dated August 24, 1973, announcing in substance that trading in Judo securities would resume on August 27, 1973, after having been suspended on May 10, 1973. (Corr DZ). It is abundantly clear for several reasons that the document was properly excluded.

First, the document is hearsay, and contrary to Corr's claim, does not fall within the hearsay exception provided for in Rule 803(8)(c) of the Federal Rules of Evidence. It does not represent a final determination of facts obtained after administrative proceedings, as Corr suggests, and does not refer to any factual finding obtained during

appropriate hearings—a factor that should be considered when determining the admissibility of the document. See Advisory Committee's Note to Rule 803(8)(c). More importantly, the fact, contained in the release, that trading in Judo was scheduled to resume on August 27, 1973 was of no particular relevance to the issues of this case. And, in any event, the Commission's decision to permit trading to resume on August 27, 1973 may well have been affected by Corr's misleading and false testimony before it in June and July, 1973. Accordingly, the release may well be based on "sources of information or other circumstances [which] indicate lack of trustworthiness." Rule 803(8)(c), Federal Rules of Evidence.

Second, we fail to discern how Corr can possibly conclude from the release that it is relevant to the issue of whether he was a control person. On the contrary, the release refers to an unnamed individual who "controlled directly or indirectly 150,000 shares or 60% of [the] float . . . ." This in no way, however, signifies anything except that the trading suspension was lifted and that, because of this factor, namely, the control by one individual of 60% of the float, the price "may be subject to erratic price movement."

Finally, the release does not indiciate that the "findings" which Corr purports to find therein were the result of a completed investigation. Indeed, an abundance of "3500" material turned over to Corr clearly shows that the great bulk of witnesses appeared at the Commission after August, 1973.

C. Judge Weinfeld Properly Excluded A Letter Of The United States Attorney For The Eastern District Of New York Containing A Sentencing Recommendation As To Jerome Mackey

Corr contends that Jerome Mackey had a motive to falsify his testimony, in view of his impending sentence in the Eastern District of New York for the crime of mail fraud. On this issue, defense counsel offered in evidence, during his cross-examination of Mackey, a letter from the United States Attorney for the Eastern District of New York to United States District Judge Jack Weinstein. (Corr XA).* Corr's contention that the exclusion of this letter constituted error and a denial of his right to a fair trial is spurious and should be rejected.

It has been clearly established by this Court that the scope of cross-examination on the issue of a witness' possible bias or motive to falsify is a matter for the sound discretion of the trial judge. *United States* v. *Turcotte*, 515 F.2d 145, 151 (2d Cir. 1975), *cert. denied*, — U.S. — (1976); *United States* v. *Miles*, 480 F.2d 1215, 1217 (2d Cir. 1973); *United States* v. *Miller*, 478 F.2d 1315, 1319 (2d Cir.), *cert. denied*, 414 U.S. 851 (1973). While defense counsel should usually be permitted wide latitude on cross-examination in his attempts to demonstrate potential bias or motive to falsify of a Government witness, his right to elicit such evidence is not limitless. *United States* v. *Blackwood*, 456 F.2d 526, 530 (2d Cir.), *cert. denied*, 409 U.S. 863 (1972). There can be no abuse of discretion if a trial judge restricts cross-examination in this area so long as the jury has already been apprised of sufficient information concerning the witness' possible motives to falsify. *United*

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* Judge Weinstein presided at Mackey's trial and was the sentencing judge.

States v. *Turcotte*, *supra*, 515 F.2d at 151; *United States* v. *Miles*, *supra*, 480 F.2d at 1217; *United States* v. *Russo*, 442 F.2d 498, 503 (2d Cir. 1971), *cert. denied*, 404 U.S. 1023 (1972); *United States* v. *Campbell*, 426 F.2d 547, 550 (2d Cir. 1970). Further questioning on this point is properly excluded where it has already been conducted "*ad nauseum.*" *United States* v. *Lipton*, 467 F.2d 1161, 1165-6 (2d Cir. 1972), *cert. denied*, 410 U.S. 927 (1973) (emphasis added).

In the instant case, Corr was permitted fully to explore on cross-examination Mackey's motives to testify. (Tr. 156-69). The jury was made well aware of the nature and seriousness of the crime for which Mackey had been convicted. (Tr. 159). Counsel brought out that as a result of that conviction Mackey faced 30 years in prison (Tr. 169); that he had not yet been sentenced (Tr. 162); that his lawyer had written a letter to Judge Weinstein asking for a postponement of Mackey's sentence (Tr. 162); that the United States Attorney for the Southern District of New York characterized Mackey as an "extremely important major witness" (Corr XB); and that Mackey had been investigated by the District Attorney for Nassau County. (Tr. 167). Clearly, Mackey's possible motive to fabricate his testimony in hopes of receiving lenient treatment when sentenced was amply detailed by defense counsel (Tr. 166-67), and subsequently argued by the latter to the jury. (Tr. 5082-84).

Corr contends that in addition to the above litany which was brought to the attention of the jury, he should also have been allowed to introduce a letter from United States Attorney Trager to Judge Weinstein recommending an unspecified period of imprisonment for Mackey (Corr XA) in order further to demonstrate the seriousness of Mackey's crime. In light of Judge Weinfeld's

statement in the presence of the jury that "the conviction of a crime in any Court is important . . ." (Tr. 168) and the fact that the jury already knew that Mackey faced a maximum 30 years in prison, the seriousness of the crime had already been amply demonstrated. The introduction of this document was therefore irrelevant or, at best, merely cumulative on the issue of Mackey's motive to falsify. Even relevant evidence may be excluded by the trial court where its presentation would be merely cumulative and therefore needless. *Hamling* v. *United States*, *supra*, 418 U.S. at 127; Rule 403, Federal Rules of Evidence.

Moreover, the trial judge carefully instructed the jury with regard to their role in determining the credibility of witnesses. The jury was told that testimony of a witness who had been convicted of criminal activity "should be viewed with caution and carefully scrutinized" and that they (the jury) should ask themselves whether such a witness may have been "inspired by any motive of self interest [or] personal advantage [or] a promise or expectation of favorable consideration upon sentence yet to be imposed. . ." (Tr. 5421-22).

Accordingly, the jury was more than sufficiently aware of any possible motive for Mackey to lie and Corr's claim should be rejected.

D. The Relationship Of Leroy And Jean Goldfarb To The Underwriter's Bank Was Not Relevant To Any Issue In The Case And Any Evidence Pertaining To Such Relationship Was Properly Excluded By Judge Weinfeld

Corr claims that Judge Weinfeld improperly excluded evidence pertaining to the relationship of Leroy and Jean Goldfarb to the Underwriter's Bank. The claim is frivolous and should be rejected.

The sole issue with respect to Count 34 was whether Corr knowingly and wilfully filed or caused to be filed a false loan application at the Underwriters Bank. (GX 40). Suffice it to say that if Corr believed that Leroy Goldfarb, and not he, told Goldfarb's wife to sign the application, he would have called Goldfarb as a witness. Indeed, the Government had anticipated calling Leroy Goldfarb and had turned over Goldfarb's "3500" material to defense counsel. Accordingly, defense counsel had material pertaining to Goldfarb prior to the time this issue arose. Furthermore, defense counsel was permitted to argue to the jury each point he now claims he was precluded from making.

Corr had introduced numerous loan cards from the Underwriter's Bank (Corr Xs EK-ER) which he claimed reflected Leroy Goldfarb's indebtedness to the bank. He also was permitted to elicit from Charles Smith the fact that a number of loan cards were missing from the bank.

In summation he argued (Tr. 5183-87), adding inference upon unsupportable inference, that because Leroy Goldfarb was indebted to the bank and because Smith testified that loan cards were missing and the bank was under examination, and because Coyne was a convicted embezzler, therefore, there existed the "possibility" that Jean Goldfarb was lying to protect her husband, and that he, and not Corr, had asked her to sign the loan application. Nevertheless, Corr was still permitted to advance this claim to the jury, notwithstanding Judge Weinfeld's view that Corr's argument was "about as absurd an argument I ever heard. . ." (Tr. 4423).

E. Judge Weinfeld Properly Limited The Scope Of The Cross-Examination Of Richard Sobel

Corr contends that defense counsel should have been permitted to cross-examine Sobel more extensively with

respect to his motivations for testifying for the Government, in light of the fact that (1) Sobel did not cooperate in full with the Government until after he had been indicted; and (2) Sobel had been indicted while Salant, his partner, had not. For reasons similar to those discussed with respect to the Mackey testimony, *supra* at Point IC, this contention is frivolous and should be rejected.

As was the case with Mackey, and contrary to Corr's contentions, Corr thoroughly exposed to the jury any and all circumstances which may have motivated Sobel's testimony. (Tr. 2033-43). Corr elicited testimony that Sobel had been questioned by the Commission without mentioning the "payoff" that Corr had offered him (Tr. 2035); that Sobel had also been silent with respect to the payoff during a meeting with the staff of the prosecution (Tr. 2036); that only after the indictment was returned against him did Sobel relate the story of the payoff (Tr. 2036); that Sobel was fully aware that Salant had not been indicted and was surprised at this development (Tr. 2039); and that Sobel had heard that the reason that Salant was not indicted was because Salant had told the grand jury that Sobel had been offered an option by Corr (Tr. 2040). It is difficult to see what additional information defense counsel would or could have brought to the attention of the jury if Judge Weinfeld had not employed his discretion in terminating this line of questioning. Any "pressure" felt by Sobel which might have motivated him to testify had already been fully explored. Additional testimony on the subject would have been unnecessarily cumulative, causing undue delay and confusion of the jury arising out of excessive attention to collateral matters.

Cast in this light, Corr's claim is meritless.

F. Judge Weinfeld Properly Limited The Scope Of The Cross-Examination of Chajet

Corr maintains that Judge Weinfeld erred in not permitting defense counsel to examine Chajet about whether or not the latter had been investigated by the Commission. This claim is completely frivolous.

Purportedly, according to Corr's brief, his inquiry into alleged SEC investigations of Chajet was for the purpose of determining the scope of Chajet's plea agreement with the Government and, thereby, Chajet's possible motive for testifying as a Government witness. However, this claim fails in light of the fact that there was no such other SEC investigation involving Chajet, and even if there had been it would have been irrelevant to Chajet's possible motives to testify in the instant case, unless he was aware of its existence and had been promised by the Government that he would not be prosecuted if it were determined that he had committed a crime. As the agreement between Chajet and the Government clearly indicates (GX 74), no favorable treatment of any kind was offered Chajet in connection with any SEC investigation. Since Chajet is not a defendant in any case other than the one in which he had been indicted and, more importantly, since there is no evidence that he was even a potential defendant in any other matter and the agreement says as much, the Government would have been in no position to offer, and Chajet could not realistically have expected, favorable treatment in a totally unrelated and hypothetical investigation. It is clear that the existence of some hypothetical SEC investigation other than that detailed in the Memorandum of Agreement between Chajet and the Government (GX 74) could have played no part in influencing Chajet to testify favorably for the Government. In any case, determining the relevancy of proffered evidence and the scope of cross-examination are matters within the sound discretion of the trial court, see Point IA, *supra*.

Further, the Government did not "open the door" to spurious cross-examination concerning a hypothetical SEC investigation involving Chajet merely by introducing the agreement into evidence. While the agreement provides for cooperation "in all matters which the Government is investigating," it is quite clear that this passage refers to *any* investigation and it is absurd, based upon the agreement, to infer, as Corr does, that Chajet was the subject of some unspecified investigation. The prosecution was well aware of its *Brady* obligations and had there been some other SEC investigation pertaining to Chajet, disclosure of the same would have been made. There simply was none.

The trial court did not abuse its discretion in limiting this testimony and Corr's claim should be rejected.

G. Judge Weinfeld's Decision To Deny Corr Review Of Material Relating To John Coyne Was Entirely Proper

Corr claims that material relating to Coyne, which was submitted by the Government to the trial judge *in camera*, marked as an exhibit for identification and thereafter sealed, should have been made available to him.

We respectfully invite this Court's attention to that material, and submit that Judge Weinfeld's determination that it was neither "3500" nor *Brady* material was clearly correct.

POINT II

There Was More Than Sufficient Evidence To Support The Jury's Finding That Corr Was A Control Person Of Judo.

Corr attacks his convictions on Counts 2-9, which charged him with the sale of unregistered securities of Judo in violation of 15 U.S.C. § 77e. These charges were premised on the contention that Corr was a "control" person of Judo and that, accordingly, the Judo stock referred to in those counts was required to have been re-registered before being sold by Corr to the public.* Acknowledging that Judge Weinfeld's jury instructions properly defined the term "control," Corr contends that the evidence was simply insufficient to submit the issue to the jury and, indeed, that the evidence "unequivocally established" that he was not a control person. (Br. at 35). Corr's contention is without merit and simply ignores large portions of the pertinent evidence.

Judge Weinfeld instructed the jury (Tr. 5344)—in terms substantially verbatim with Rule 405 of the Securities Act of 1933, 17 C.F.R. § 230.405(f)—that a "control person" was

> "one who, by one means or another, such as stock ownership, holding of executive office, or in any other manner, directly or indirectly, has the power to direct the management, policies, and decisions of the corporation."

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* The Judo stock in question was already registered pursuant to the public offering in August, 1971. Nevertheless, if sold by a "control person" the stock would have had to have been re-registered under Title 15, United States Code, Sections 77b and 77e.

This Court has said and Judge Weinfeld reiterated for the jury (Tr. 5344) that "[t]he meaning of 'control' under the [1933] act is no different than its normal everyday usage." *United States* v. *Re*, 336 F.2d 306, 316 (2d Cir.), *cert. denied*, 379 U.S. 904 (1964). Thus, while it is certainly proper for a jury to consider stock ownership as one aspect of control, it is settled that "[a] control person need not own a majority of the voting stock." *SEC* v. *R.A. Holman & Co.*, 377 F.2d 665, 667 (2d Cir.), *cert. denied*, 389 U.S. 991 (1967); *accord*, *SEC* v. *International Chem. Dev. Corp.*, 469 F.2d 20, 28 (10th Cir. 1972). Accordingly, Corr's contention (Br. at 35-36) that Jerome Mackey's status as Judo's majority shareholder necessarily determines the issue favorably to him is simply in error. Whether a given individual is a "control" person is a question of fact whose resolution requires an analysis of the totality of the circumstances of the case, including an appraisal of the general effect of the various relationships involved. *SEC* v. *American Beryllium & Oil Corp.*, 303 F. Supp. 912, 915 (S.D.N.Y. 1969).

In the instant case, Corr both exercised very considerable independent authority for the conduct of Judo's affairs and, by reason of the strength of his relationship with Mackey, greatly influenced the authority exercised by the latter—the other singly most important individual associated with Judo. The evidence revealed that Corr worked on Judo's franchise program. He was responsible for introducing numerous companies to Mackey for the purpose of acquisition or a merger with Judo and, indeed, was responsible for changing the entire concept with respect to the manner in which the schools taught Judo. (Tr. 193-94). As part of Corr's contracts of employment he was responsible for the financing of Judo, and the company's financial public relations. It was Corr and Corr alone who arranged and negotiated for the financial public relations firm of Anametrics, Inc., to represent Judo. Indeed, when-

ever Stephen Greenberg, the president of Anametrics, Inc. needed information about the company, he turned to Corr and not Mackey. (Tr. 2996-3004).

Corr had authority to negotiate for and bind the corporation. (Tr. 98). It was Corr who, when Judo was going to be delisted from NASDAQ, arranged for a broader distribution of Judo securities, including the "swap" with Morgan Kennedy; and it was Corr who arranged and negotiated for what he termed an investment banking contract between Judo and Morgan Kennedy. (Corr X V).

Most importantly, it was Corr who negotiated for the acquisition of TS & S by Judo, a deal he termed the single "most important development . . . in 1972, for Jerome Mackey" (Tr. 3524, 1936-39, 1946-51); and it was Corr who, upon entering into negotiations with TS & S, proceeded to call all the brokers, marketmakers and security analysts to keep them advised of the developments. (Tr. 3518-23).

Further, it was Corr who met with and provided information to Russell Wayne of Value Line which subsequently resulted in Value Line writing about and recommending the purchase of Judo to its subscribers. (Tr. 2757-63).

The Government argued to the jury that a major part of a public company's affairs is its dealings with the public, and even a cursory analysis of Corr's activities with respect to the brokers, securities analysts, investors and marketmakers clearly shows that it was he and not Mackey who had primary responsibility in this area. Corr's own testimony is replete with references to "we" and "I" when discussing Judo and its officers.

Finally, Corr himself trumpeted his own deep and controlling interest in Judo when he testified before the Commission that he "was performing financial public relations services for the company, and I had the use of all the company assets, property, anything that I needed. I could ask upon request, and in general I had carte blanche to anything the corporation had." (Tr. 3145). In describing his own achievements with Judo it was Corr who further testified before the Commission that:

> "I had a contract to continually augment the financing of the company, to sell franchises, to act in financial relationship with the Wall Street community, people that I knew, and generally put forward the franchise program, which is what I feel I did."
>
> "I brought in television advertising, basically put together the majority of the people that performed services for the corporation today. I brought in house counsel, outside SEC counsel, I announced and formulated the first acquisition, the first acquisition for the company, met with people of the financial press like Value Line. I gave pre-determined Mackey material to people on Wall Street, people who made markets in the stock, basically people that I knew or people that my friends knew." (Tr. 3136).

Corr's claim that there was insufficient evidence from which "a reasonable mind might fairly conclude . . . beyond a reasonable doubt," *United States* v. *Taylor*, 464 F.2d 240, 242-45 (2d Cir. 1972), that he was a "control" person of Judo is meritless.

POINT III

Corr Was Properly Convicted On Counts 4, 6, 7 and 10, Of Indictment 75 Cr. 1059, Of Making False Statements To The Commission In Violation Of 18 U.S.C. § 1001.

Corr contends that the charges in Counts 4, 6, 7 and 10 premised on his sworn and allegedly false testimony before the Commission, 18 U.S.C. § 1001, should have been dismissed on the grounds that the assertedly false statements or answers in (1) Count 4 are not responsive and do not relate to the question that they follow; and those in (2) Counts 6, 7 and 10 are consistent with the Government's version of the facts, or are responses to questions so imprecise as to preclude, under the authority of *Bronston* v. *United States*, 409 U.S. 352 (1973), a prosecution for violations of Section 1001. The argument is completely without substance.

It is well-settled that the intent of Congress in formulating 18 U.S.C. § 1001 was to protect the authorized functions of the various governmental departments from any type of deceptive practices, *United States* v. *Gilliland*, 312 U.S. 86 (1941); *United States* v. *McCue*, 301 F.2d 452 (2d Cir.), *cert. denied*, 370 U.S. 939 (1962), as well as from "those who would cheat or mislead it [governmental department] in the administration of its programs . . ." *United States* v. *Johnson*, 284 F. Supp. 273, 278 (W.D. Mo. 1968), *aff'd*, 410 F.2d 38 (8th Cir.), *cert. denied*, 396 U.S. 822 (1969).

It is also clear that Section 1001 is violated not only by one who makes false representations but also by one who conceals materials facts. *United States* v. *Diogo*, 320 F.2d 898 (2d Cir. 1963).

A. Count 4

Corr's reliance on *Bronston* v. *United States*, *supra*, is misplaced. Besides the obvious fact that *Bronston* dealt with a perjury violation under 18 U.S.C. § 1621, a statute clearly different in scope and in the nature of the proof required to convict, see *United States* v. *Marchisio*, 344 F.2d 653 (2d Cir. 1965), there is nothing in *Bronston* to suggest that it is applicable to situations where the testimony is obviously false but unresponsive to the question.*

Moreover, this Court has held that Section 1001 is violated by one who, wholly free of compulsion and without solicitation, volunteers to a federal agency a false, unsworn statement intended to mislead. *United States* v. *Adler*, 380 F.2d 917, 922 (2d Cir.), *cert. denied*, 389 U.S. 1006 (1967). It is simply immaterial that the false declaration is not a responsive utterance to some preceding question.

In the instant case, Corr's sworn testimony before the Commission that the Ventura family desired to gain control of Judo and was purchasing that company's stock in order to do so—although unresponsive to the immediately preceding question—was clearly not "true and complete on its face," as in *Bronston*, but patently false. Indeed, Corr was flatly contradicted by Cohen, who testified that the Ventura family was not interested in getting control of Judo. (Tr. 2323-29, 3928). Further, the Ventura family was not, as Corr had testified, in the process

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* Whatever the accuracy of Corr's assertion that *United States* v. *Ehrlichman*, 379 F. Supp. 291 (D.D.C. 1974), is authority for the extension to Section 1001 prosecutions of the bar to perjury prosecutions raised by a literally truthful answer, *Bronston* v. *United States*, *supra*, it is inapposite to the instant case where the Government demonstrated with convincing clarity the utter falsity of Corr's sworn responses.

of buying stock in the open market. Rather, it was Corr, after exhausting Ventura's $80,000 and Cohen's $20,000, who proceeded to use their accounts to buy Judo securities with his own funds. (GX 256). Corr's answer was clearly intended to mislead the Commission and to conceal the fact that he was using brokerage and bank accounts of others to conceal his own securities transactions.

As for the claim by Corr that he misunderstood the question, suffice it to say that the issue of the interpretation the defendant placed on the question at the time of the alleged prevarication is for the jury. *United States* v. *Bonacorsa*, 528 F.2d 1218, 1221 (2d Cir.), *cert. denied*, 44 U.S.L.W. 3719 (U.S. June 14, 1976); *United States* v. *Chapin*, 515 F.2d 1274 (D.C. Cir.), *cert. denied*, 44 U.S.L.W. 3344 (U.S. Dec. 8, 1975); *United States* v. *Diogo*, *supra*, 320 F.2d at 907; *United States* v. *Marchisio*, *supra*, 344 F.2d at 661-62. Nothing in *Bronston* derogates from the settled rule that it is for the jury to decide how Corr interpreted the pertinent question when he responded to it before the Commission. The answer in any event was not literally true but patently false, as the evidence overwhelmingly demonstrated.

B. Counts 6 and 7

Corr claims that Counts 6 and 7 should have been dismissed on the grounds that the questions were insufficiently precise and that the resulting ambiguous answers were capable of a truthful construction. The claim is thoroughly groundless. The answers were demonstrably false, and the questions "[t]o a person predisposed to answer truthfully . . . [,] were clear." *United States* v. *Albergo*, Dkt. No. 75-1279 (2d Cir. June 17, 1976), slip op. 4211, 4218.

In the testimony pertaining to Counts 6 and 7, Corr testified that Sonberg and Keogh "maintained" brokerage

accounts and that Sonberg purchased Judo in 1972. (Tr. 1073, 1087, 1413-14). One need not be a semanticist, as Corr suggests is required, to discern that Corr lied to the Commission. Both Sonberg and Keogh testified that they did not maintain brokerage accounts. Indeed, not only were they unaware of what transactions were being effected in accounts opened in their names, but neither of them placed any orders to purchase or sell Judo securities in 1972 or put up any funds to do so.

The fact that sales of Judo securities through accounts opened in Sonberg's name yielded $87,600.62, which went thereafter into Corr's bank accounts, puts the lie to Corr's testimony that there had never been a disbursement of one dollar from Sonberg's accounts. (GX 255). In fact, there was no evidence of any accumulation of securities or cash balances in accounts opened in Sonberg's name, with the exception of the Health stock at Morgan Kennedy (Tr. 1434-35), and Sonberg testified he was not even aware of that transaction. In the case of the other accounts opened in Sonberg's name—at Sterling Grace, and Halle & Stiglitz—there was no accumulation of stock and cash balances as Corr had testified, but rather a series of sales which produced receipts thereafter transferred to Corr's bank account. (GX 38, 66B, 224, 226A-C). Moreover, the $9,000 Sonberg testified he did give to Corr to invest was specifically designated by Sonberg for investment in Judo franchises and not Judo securities.

Finally, Corr's testimony that the money that went into the brokerage accounts in Sonberg's name was in fact Sonberg's, and represented funds he had coming to him, was transparently a lie. Sonberg said he had already been paid $9,000 for the only services he had performed for Judo.

With respect to Keogh, she testified that all she received from Corr was approximately $20,000, and that she had no interests in any property beyond the home—the interest in which she sold for $12,500. (Tr. 1070). Accordingly, there was ample evidence that Corr lied when he said that the equity in the "Keogh" accounts had been split in 1973 "50-50" between Keogh and him. The evidence was clear that $345,317.09 had been generated from accounts opened in Keogh's name and that there had never been any 50-50 split of these funds. Additionally, there was no joint money involved in any "Keogh" accounts, as Corr testified, because Keogh never had any joint accounts with Corr. After July 14, 1972, when she moved out of Corr's house, she seldom had conversations with him. (Tr. 1074). Indeed, Keogh testified that even when she was living at Corr's house after her divorce, she did not recall discussing any securities transactions (Tr. 2651). Corr testified before the Commission to a flatly contrary story. Finally, Corr testified that if any checks had been issued from an account in Keogh's name, they were for small debit balances and would not have been substantial. Suffice it to say that checks did issue from "Keogh" accounts for credit, not debit, balances; and what Corr labeled insubstantial sums consisted of individual checks for $69,379, $57,000, $51,850, $28,156.25, $27,599.84 and $20,200. (GXs 38, 39, 46a, 46c-d, 47, 49, 53, 54, 60, 174, 175, 176, 182a, 182c, 183a, 183d-e). All of these funds, and more, went into Corr's bank accounts.

C. Count 10

Corr misstates the issue with respect to Count 10. Corr was not asked if he made earnings projections; rather, he was asked if he made *price* projections. Corr's testimony before the Commission that he did not believe he had made any price projections in Judo flies in the

face of the proof that such price projections were, in fact, made by Corr when he touted Judo to Chajet. (Tr. 1195). It was for the jury to determine, by reference to all the circumstances pertinent to Corr's state of mind at the time he testified, whether that tesimony was innocently false or had been given with the intentional and wilful purpose of concealing the truth. *United States* v. *Bonacorsa*, *supra*, 528 F.2d at 1218; *United States* v. *Remington*, 191 F.2d 246, 249 (2d Cir. 1951), *cert. denied*, 343 U.S. 907 (1952); *United States* v. *Charnay*, 211 F. Supp. 904, 906 (S.D.N.Y. 1962) (Weinfeld, J.).

POINT IV

There Was No Prejudice To Corr Either In Judge Weinfeld's *Pinkerton* Charge Or In His Marshaling Of The Evidence.

A. The *Pinkerton* Charge

Corr claims that Judge Weinfeld erred in charging the jury based on *Pinkerton* v. *United States*, 328 U.S. 640 (1946), with respect to Counts 11 (15 U.S.C. § 77q (a)); 12-17, 19 and 21-22 (15 U.S.C. § 78j(b)); and 23-25 and 27-33 (18 U.S.C. § 1341). The claim is frivolous. There was overwhelming evidence from which the jury could permissibly have found that Corr was a member and, indeed, the architect of the alleged conspiracy, and that the substantive offenses charged—most of which had been committed personally by Corr—were in furtherance of that criminal agreement.

This Court has reaffirmed only recently the vitality of the theory of vicarious liability articulated in *Pinkerton*, which holds conspirators criminally liable for the substantive offenses of their co-conspirators commited in furtherance of the conspiracy. *United States* v. *Finkel-*

stein, 526 F.2d 517, 522 (2d Cir. 1975); *United States* v. *Aloi*, 511 F.2d 585, 600 (2d Cir.), *cert. denied*, 44 U.S.L.W. 3344 (U.S. Dec. 8, 1975); *United States* v. *Cirillo*, 468 F.2d 1233, 1239 (2d Cir. 1972), *cert. denied*, 410 U.S. 989 (1973).

Corr's contention that the jury in the instant case was asked to infer the existence of a conspiracy from a series of disparate criminal offenses is absurd. See *United States* v. *Sperling*, 506 F.2d 1323, 1341-1342 (2d Cir. 1974), *cert. denied*, 420 U.S. 962 (1975). On the contrary, the evidence of the existence of a conspiracy, which we have detailed at length in the Statement of Facts, was overwhelming. Corr's claim that all of the fraudulent acts required the participation of a co-defendant broker is also equally inaccurate.

Pinkerton is applicable in any event even where a defendant may be unaware that the substantive crime is being committed, so long as the offense is in furtherance, and a reasonably foreseeable incident, of a conspiracy of which the defendant is then a member. *See United States* v. *Bermudez*, 526 F.2d 89, 98-99 (2d Cir. 1975), *cert. denied*, 44 U.S.L.W. 3659 (U.S. May 19, 1976); *United States* v. *Miley*, 513 F.2d 1191, 1208 (2d Cir. 1975), *cert. denied*, — U.S. — (1976). Here, not only was Corr aware that the substantive crimes were being committed, but he was either a direct participant in or caused the commission of most of those crimes. *Pinkerton* v. *United States*, *supra*, 328 U.S. at 646; *see Pereira* v. *United States*, 347 U.S. 1 (1954).

Thus, with respect to the events which were the subject of Counts 12, 19 and 23, Corr spoke directly to Sonkin, Aperauch and Buttram, respectively, and induced them to purchase Judo securities. The defrauded individuals specified in Counts 14-17 and 24 were customers of Sobel and Salant who, but for Corr's offer of a payoff to Sobel and Salant, would never have been solicited by the

latter to purchase Judo securities. With respect to Counts 21, 22, 32 and 33, it was Corr, by his use of the accounts of Ventura, Cohen and Van Ess to manipulate Judo, who occasioned the mailing of the confirmations of purchase by the brokerage firm of Raymond, James. Counts 29 and 30 reflect the "wooden tickets" at H. Hentz—which B. Drayer, Kern testified, had said Corr was behind. (Tr. 2272). Count 31 is the "wooden ticket" Corr personally placed at Margolis & Co. Count 27 concerns one of the "parking" transactions between Buschbaum and Murphy, about which the latter informed Corr since, as Buschbaum explained, he (Buschbaum) had exceeded his limit in the trading account. (Tr. 528-29, 1836). Counts 11 and 28 reflect the purchase of Judo by customers of Morgan Kennedy in the fraudulent "swap" which originated with Corr.

B. Marshaling the Evidence

Corr claims that Judge Weinfeld erred in marshaling the evidence. The claim is frivolous.

It is well-settled that the trial court has broad discretion in determining whether to marshal the evidence. *Quercia* v. *United States*, 289 U.S. 466, 469-70 (1933); *United States* v. *Tramunti*, 513 F.2d 1087, 1107 (2d Cir.), *cert. denied*, 423 U.S. 832 (1975); *United States* v. *Tourine*, 428 F.2d 865, 869 (2d Cir. 1970), *cert. denied sub nom. Burtman* v. *United States*, 400 U.S. 1020 (1971). This Court has said that a trial court, in its discretion, may properly marshal the evidence so long as it refrains from commenting on that evidence in such a manner as to present a partisan view to or invade the province of the jury. *United States* v. *Light*, 394 F.2d 908, 911 (2d Cir. 1968). Corr does not and could not claim here that Judge Weinfeld unfairly commented upon or distorted the evidence.

Corr's reliance on *United States* v. *Kahaner*, 317 F.2d 459 (2d Cir.), *cert. denied sub nom. Corallo* v. *United States*, 375 U.S. 835 (1963), is completely misplaced. Unlike the instant case, which involved a six-week, complicated securities fraud trial arising out of a multi-count indictment, *Kahaner* was a case arising out of a single count indictment. Thus, the need for and desirability of marshaling the evidence in the instant case was appreciably greater. Even so, in *Kahaner* this Court, recognizing the broad discretion which a trial judge enjoys in determining whether to marshal the evidence, stated that it was not ". . . remotely suggesting that it could be deemed error for the judge here to have summarized the evidence . . . ." 317 F.2d at 479 n.12.

Similarly inapposite is Corr's reliance on *United States* v. *Kelly*, 349 F.2d 720 (2d Cir. 1965), *cert. denied*, 384 U.S. 947 (1966). The instant case is precisely the type of case for which *Kelly* held marshaling of the evidence is particularly important—a long and complicated trial with multiple defendants arising out of a multi-count indictment, 349 F.2d at 757—a conclusion reaffirmed only recently by this Court. *United States* v. *Wiener*, Dkt. No. 75-1218 (2d Cir. Mar. 24, 1976), slip op. 2753, 2758-59. Corr's attempt to distinguish *Kelly* from the instant case on the ground that, unlike *Kelly*, here the evidence was marshaled on both the substantive as well as the conspiracy counts is spurious. Such a distinction ignores the central purpose for marshaling the evidence, which is equally applicable to both substantive and conspiracy counts. Moreover, even accepting, *arguendo*, Corr's contention that marshaling of the evidence was not "required" in this case, an unnecessary summary, without more, does not constitute reversible error in light of the trial judge's broad discretion. *United States* v. *Kahaner*, 317 F.2d at 479.

Corr's argument that he was prejudiced by the fact that the trial judge devoted more time in his summary to the Government's evidence than to that of the defense is meritless. This Court has said that "in a long trial in which the prosecution has introduced far more evidence than the defense, the judge is not required to devote equal time in his summary to both the defense and the prosecution." *United States* v. *Light*, *supra*, 394 F.2d at 911. *See also United States* v. *Edwards*, 366 F.2d 853, 868 (2d Cir. 1966), *cert. denied*, 386 U.S. 966 (1967).

POINT V

Judge Weinfeld Properly Admitted Against Corr Testimony Relating To American Agronomics, The "Wooden Ticket" At CBWL-Hayden Stone and the CMB Loan Application; and Against Drayer Evidence Of The "Wooden Ticket" For Duodecimal Corp.

A. American Agronomics

Corr claims that the Government improperly was permitted to elicit testimony from Sonberg relating to Sonberg's transactions in Agronomics securities with funds provided to him by Corr; and that this evidence, similar in nature to the proof relating to Judo securities, was not disclosed to him before trial. In any event, he claims this evidence was so prejudicial that it should have been excluded by Judge Weinfeld.

On direct examination, after testifying that he had only an eighth grade education, income of $8,000 in 1972, did not know anyone at the brokerage firms of Sterling Grace, Halle & Stieglitz or Morgan Kennedy, where accounts had been opened in his name, and did not purchase or sell any Judo securities in 1972 or put up any

funds to purchase Judo securities, Sonberg was asked the following questions and gave the following answers (Tr. 1438-41):

Q. Mr. Sonberg, did you receive all or part of the proceeds of the sale of 10,000 shares of Jerome Mackey's Judo?*

A. No.

Q. At any time?

* * * * *

A. Well, then I'd have to say yes.

Q. When was that, sir?

A. This would go back to around November of '75.

* * * * *

Q. How much did you receive?

A. I'd have to give you a round figure. Approximately $150,000.

Q. Now Mr. Sonberg, where did you receive that figure from on that sum?

* * * * *

A. From Mr. Corr.

Q. Was this in the form of a check or cash?

A. It was in the form of stock.

Q. Which stock?

A. American Agronomics.

* * * * *

Q. Did you enter the order to purchase any Agronomics stock at any time?

A. Yes.

Q. Did you pay for that stock?

A. Yes.

Q. Did Mr. Corr give you money to pay for that stock?

A. Yes.

* * * * *

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* 10,000 shares of Judo had been sold by Morgan, Kennedy through an account opened in Sonberg's name.

Q. Did you give him money to buy Agronomics or did he give you stock totalling $150,000.

A. No, he gave me the money to buy the stock.

All of the above testimony was received without objection by Corr.

On cross-examination of Sonberg, in an obvious attempt to refute the Government's claim that Corr used his own funds to trade Judo through accounts opened in Sonberg's name, and to support his contention that he only managed Sonberg's investments, Corr introduced checks totalling $180,000 which Sonberg testified represented the monies given to him by Corr for his (Sonberg's) investment of $9,000 in Judo. (Tr. 1469-72; Corr Xs BI, BJ, BK).

On re-direct examination, over Corr's objection, Judge Weinfeld ruled (Tr. 1485) that it was permissible for the Government to inquire of Sonberg, whose credibility was clearly in issue at this point (1) whether to Sonberg's knowledge the original $9,000 investment in Judo *franchises* had appreciated to $180,000 in Judo *securities;* (2) whether Corr was attempting to gain control of Agronomics;* (3) whether Corr had told Sonberg to open up brokerage accounts and where to open these accounts; (4) whether Corr told Sonberg or, as Sonberg testified, "suggested" that Sonberg purchase Agronomics; and (5) whether Sonberg consulted with Corr prior to each Agronomics transaction. Judge Weinfeld's determination was clearly correct. The re-direct examination was highly probative since it tended to refute any claim by Corr and Sonberg that the $180,000 paid by Corr to Sonberg genuinely belonged to the latter and not Corr, and tended

* Corr's entire "good faith" defense was premised on his claim that he was attempting to gain control of Judo.

to refute the defense claim that Corr did not control either Sonberg or accounts in Sonberg's name, and did not use Sonberg's name to conceal his own transactions.

B. The CBWL-Hayden, Stone, Inc. "Wooden Ticket"

Corr claims that he was prejudiced by the introduction into evidence of a "wooden ticket" for 2,000 shares of Judo placed by him at CBWL-Hayden, Stone, Inc. in an account of Van Ess on May 7, 1973.

The "wooden ticket" at CBWL-Hayden, Stone, Inc. was properly admitted as further evidence of a "manipulative and deceptive device and contrivance in furtherance of the conspiracy." The Government disclosed on October 15, 1975, as part of pre-trial discovery and in response to a demand by Corr, that an additional "manipulative and deceptive device in furtherance of the conspiracy" it intended to prove was the "wooden ticket" in Van Ess' account. Clearly, the conspiracy was still in effect as of May 7, 1973, the date the order was placed. Further, Van Ess testified that he and Corr had an arrangement whereby Van Ess would purchase securities on Corr's advice and thereafter pay Corr a commission (Tr. 2563), but that the actual orders would be entered by Corr and Drayer.

Most importantly, Corr told Van Ess that he (Corr) wanted to purchase securities using Van Ess' name. (Tr. 2580). Thus, the order by Corr was clearly probative of his relationship to Van Ess, see *United States* v. *Torres*, 519 F.2d 723, 727 (2d Cir.), *cert. denied*, 44 U.S.L.W. 3344 (U.S. Dec. 8, 1975), his attempt to maintain the market price of Judo, and his continuing course of conduct in attempting to conceal his own transactions in Judo through the accounts of others, all of which were directly probative of the offenses charged.

C. The Chase Manhattan Loan

Corr's claim that a new trial is required because of the admission in evidence of testimony relating to a loan application with Chase Manhattan Bank ("CMB") is wholly without merit. Judge Weinfeld permitted the Government to ask Corr on cross-examination about this loan application, but refused to receive the loan application as an exhibit on the grounds that the application was not complete on its face. (Tr. 4085).

Corr had testified that he had never filed a false loan application. The Government in an effort to attack Corr's credibility attempted to elicit on cross-examination that Corr had filed a $250,000 loan application with CMB which falsely stated that the borrowed money was to be used to purchase an apartment. Judge Weinfeld clearly instructed the jury that "[t]his testimony is being received solely and only on the issue of the witness' credibility. It is no proof of any of the offenses charged in the indictment." (Tr. 4084).

In any event a reading of the relevant testimony reveals that all the jury had before it was the fact that Corr had borrowed $250,000 from the Chase Manhattan Bank and had not used that money to purchase an apartment. (Tr. 4078-86). Corr never did answer the question whether he had declared on his loan application that the purpose of the loan was to purchase an apartment (Tr. 4086), and the loan application itself was not received in evidence. Therefore, the jury never learned that Corr had filed a *false* loan application with the Chase Manhattan Bank.

D. Ducatel Corp.

Drayer claims that the introduction of evidence that he had placed a "wooden ticket" in Ducatel Corp. securities at M. S. Wien in September, 1972—one month before the "wooden tickets" in Judo were placed—so preju-

diced him as to require reversal and a new trial. The claim is frivolous.

The testimony showed that Drayer had placed an order with Wien on behalf of Jenny Associates for the sale of shares of Ducatel Corp. (Tr. 2941). Subsequently, after the sale was made, Drayer failed to deliver the securities to Wien. (Tr. 2943). This forced Wien to effect a "buy in", *i.e.*, to purchase stock in the open market in order to cover its sale to another broker. (Tr. 2943-44). Because the price of the stock had risen in the interim, Wien had to "buy-in" at a higher price in order to make delivery. (Tr. 2945). This resulted in a net loss to Wien of approximately $65,000. (Tr. 2943).

This evidence was highly probative of Drayer's intent, motive and knowledge in placing similar "wooden tickets" in Judo securities with various brokerage firms one month later. See *United States* v. *Chestnut*, 533 F.2d 40, 49-50 (2d Cir. 1976); *United States* v. *McClean*, 528 F.2d 1250 (2d Cir. 1975), *cert. denied*, 44 U.S.L.W. 3608 (U.S. Apr. 26, 1976); *United States* v. *Papadakis*, 510 F.2d 287 (2d Cir.), *cert. denied*, 421 U.S. 950 (1975).

These transactions involved orders to purchase large amounts of stock in Judo for which he subsequently failed to make payment. The brokerage firms then had to "sell out," *i.e.*, sell the stock it had purchased in order to pay the broker from whom it bought the stock. In the interim, the market price of the stock had decreased, and the brokerage firms with whom Drayer dealt had to sell out at a lower price. This resulted in net losses to these firms.

Thus, the nature of the two, temporally proximate transactions is sufficiently similar to create a strong inference that Drayer's "wooden tickets" in Judo were wilful, deliberate and purposeful. That Drayer's transactions in Ducatel involved fraudulent orders to sell

while those in Judo involved fraudulent orders to buy is immaterial. The close parallel between the prior conduct and the crimes charged is a consideration for the trial judge in determining the probative value as against the prejudicial effect. *United States* v. *Chestnut*, *supra*, 533 F.2d at 49; *United States* v. *Leonard*, 524 F.2d 1076, 1091 (2d Cir. 1975), *cert. denied*, 44 U.S.L.W. 3624 (U.S. May 3, 1976); and there is no requirement that the Government prove that the prior conduct was criminal. *United States* v. *Brand*, 79 F.2d 605, 606 (2d Cir.) (L. Hand, *J.*), *cert. denied*, 296 U.S. 655 (1935).

Moreover, Judge Weinfeld made it abundantly clear in his instructions to the jury, both at the time of admitting the Wien testimony and during the formal charge, that the evidence of the similar act was being admitted for the limited purpose of determining Drayer's intent. (Tr. 2940, 5321).

In any event it is well settled that the admissibility of evidence relating to similar acts is within the sound discretion of the trial judge, *United States* v. *Natale*, *supra*, 526 F.2d at 1174, whose determination will rarely be reversed on appeal. *United States* v. *Leonard*, *supra*, 524 F.2d at 1092.

POINT VI

The Evidence Of Drayer's Guilt Was More Than Sufficient.

Drayer attacks his convictions on Counts 1, 21-22 and 29-33, asserting that the evidence failed to establish the fraudulent character of his conduct in placing the so-called "wooden tickets" and failed, in any event, to establish that he had conspired with Corr. The assertion is meritless.

The proof established that Drayer entered orders in the name of Jenny Associates * to purchase $250,000 worth of Judo securities at three brokerage firms without thereafter ever paying for any of the securities. Specifically, from October 11, through October 17, 1972, while Corr "bailed out" of Judo by selling for himself and his friends over $600,000 worth of Judo securities in the "swap" with Morgan Kennedy, Drayer was placing orders for Judo totaling $250,000 at H. Hentz, MLPFS and Dominick on October 13, and 16, 17, and 19, respectively (GXs 93(a), 97, 98, 105), for the obvious purpose of maintaining the market price of Judo. The Judo securities to be purchased at MLPFS and Dominick were, pursuant to Drayer's orders, to be delivered against payment to the Underwriters Bank (GXs 93(c), 104)—a bank where Corr and not Jenny Associates had an account.

The evidence established that at the time Drayer placed the orders, Jenny Associates did not have sufficient funds to pay for the securities. The new account card of Jenny Associates at MLPFS reflected assets of about $250,000. This was filled out on September 25, 1972. (GX 93(c)). Thereafter, however, $66,000 was used by Jenny Associates prior to October, 1972 to purchase shares of another security. (GXs 100a-c). Accordingly, at the time of the "wooden tickets" Jenny Associates did not have $250,000 in liquid assets to pay for the stock.**

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* Drayer was the sole general partner in Jenny Associates, an investment partnership. Drayer was also a registered representative and a principal in Fingerhut & Co., Inc. a broker-dealer.

** Assuming *arguendo* that Jenny Associates did have sufficient assets to pay, its failure to do so would demonstrate all the more the fact that Drayer never had any intention to pay for the securities.

From the foregoing and the evidence of Drayer's similar conduct with respect to Ducatel Corp. (see Point VD, *supra*), the jury could properly have found a fraudulent intent on Drayer's part.

Additionally, the character of Drayer's conduct as a device in furtherance of the charged conspiracy was amply established by the impact of that conduct on the market price of Judo; the contemporaneity of that conduct with Corr's bailout of $600,000 worth of Judo; the evidence of B. Drayer's statement to Kern that Corr was behind the "wooden tickets" and that Corr "had told his brother [namely, Drayer] to do so . . . (Tr. 2272); by the evidence that Drayer, accompanied by Corr, tried to place another "wooden ticket" at Morgan Kennedy in November, 1972, after Judo had dropped drastically in price (Tr. 1259-61, 2499-500; GX 257); and by the other evidence of the association and affiliation of Drayer with Corr.

Thus, for example, there was evidence that Drayer was present in the corporate apartment in October, 1972, at a meeting attended by Corr, Buschbaum and Kern, where there was a discussion of the Judo transfer sheets, Judo's "short" position and how each person could help the situation. Drayer said he would get in the next day and purchase 5,000 shares of Judo, while Corr said he was working on a block of 10,000 to 20,000 shares. There was also a discussion about who was to remain "high bid" —Chajet or Buschbaum. (Tr. 2257-58). After the meeting Drayer approached Buschbaum and asked him how much stock was needed to get the price back up. Buschbaum replied "10,000 shares." A day or so later, Drayer entered the "wooden tickets" at Dominick for 10,000 shares of Judo. (Tr. 553). Drayer was present at H. Hentz when Corr tried to get Ventura to pay for the shares of Health he (Corr) had not paid for. (Tr. 2261).

In sum, the jury's finding of Drayer's membership in the conspiracy—which served as the predicate, under *Pinkerton*, for his convictions on all but two of the remaining, pertinent counts, was proper. The evidence was more than sufficient, particularly in light of the settled law that evidence of even a single act may establish one's membership in the conspiracy, if it is an act from which knowledge of the general conspiracy can be inferred. *United States* v. *Sa[illegible]a*, 503 F.2d 710, 715 (2d Cir.), *cert. denied*, 419 U.S. 1053 (1974); *United States* v. *Ramirez*, 482 F.2d [illegible]16 (2d Cir.), *cert. denied*, 414 U.S. 1012 (1973). In addition, Drayer did not take the stand in his own defense or otherwise offer any evidence that provided a plausible exculpatory explanation for his actions. "When a defendant has offered no case, it may be reasonable for a jury to draw inferences from the prosecution's evidence which would be impermissible if the defendant had supplied a credible exculpatory version." *United States* v. *Frank*, 494 F.2d 145, 153 (2d Cir.), *cert. denied*, 419 U.S. 828 (1974).

POINT VII

Judge Weinfeld Properly Denied Drayer's Motion For A Severance.

Drayer claims that Judge Weinfeld should have granted his motion to sever under Rule 14 of the Federal Rules of Criminal Procedure and that his failure to do so so prejudiced him (Drayer) that reversal and a new trial are required. The claim is without merit.

It is well settled that a motion to sever is addressed to the cound discretion of the court, *Opper* v. *United States*, 348 U.S. 84, 95 (1954); *United States* v. *Turcotte, supra*, 515 F.2d at 150; *United States* v. *Peden*, 472 F.2d 583, 584 (2d Cir. 1973); *United States* v. *Calabro*,

467 F.2d 973, 987 (2d Cir. 1972), *cert. denied*, 410 U.S. 926 (1973); *United States* v. *Projansky*, 465 F.2d 123, 138 (2d Cir.), *cert. denied*, 409 U.S. 1006 (1972), and will not be disturbed on appeal except in cases of clear abuse. *United States* v. *Jenkins*, 496 F.2d 57, 68 (2d Cir. 1974), *cert. denied*, 420 U.S. 925 (1975); *United States* v. *Projansky*, *supra*, 465 F.2d at 138. On appeal, the defendant must show *substantial* prejudice as a result of the joinder, not merely a better chance for acquittal if separate trials were had. *United States* v. *Papadakis supra*, 510 F.2d at 297; *United States* v. *Borelli*, 435 F.2d 500, 502 (2d Cir. 1970), *cert. denied*, 401 U.S. 946 (1971).* "[A] trial court's refusal to grant severance will rarely be disturbed on review." *United States* v. *Borelli*, *supra*, 435 F.2d at 502. *See also United States* v. *DeSapio*, 435 F.2d 272, 280 (2d Cir. 1970), *cert. denied*, 402 U.S. 999 (1971).

This Court has repeatedly expressed a general preference in favor of trying together those defendants who are jointly indicted, where the crime charged in the indictment is provable against all such defendants by the same evidence, and where the criminal activity arises out of the same or a similar series of acts. *E.g.*, *United States* v. *Kahaner*, 203 F. Supp. 78, 80-81 (S.D.N.Y. 1962) (Weinfeld, *J.*), *aff'd*, 317 F.2d 459 (2d Cir.), *cert. denied*, 375 U.S. 836 (1963). Such a policy conserves judicial resources, helps to ensure a

* "Quite naturally in any multi-defendant trial there will be differences in degree of guilt and possibly degree of notoriety of the defendants. There may be some likelihood that proof admitted as to one or more defendants will be harmful to the others. However, this possibility does not necessarily justify individual trials." *United States* v. *Aloi*, 511 F.2d *supra* at 598.

prompt trial of those accused, avoids duplicitous, time-consuming trials and alleviates the burdens of citizens serving as jurors and witnesses.

Drayer has simply not shown the substantial prejudice which would be required to outweigh these strong policy factors and necessitate interference with the broad discretion of the trial judge. His reliance on *United States* v. *Kelly*, *supra*, 349 F.2d at 720 is misplaced. In Kelly, the Court found substantial prejudice resulting from the joint trial of one defendant, against whom the evidence of participation in the single conspiracy alleged in the indictment was "tenuous and unsubstantial," with two other defendants, against whom there was significantly more evidence of illegal conduct and who were the central figures of the conspiracy. The Court held that there was too great a danger that the jury might have failed to distinguish the proof against the former defendant from that against the latter two and that the former might therefore have been prejudiced by the accumulation of evidence of wrongdoing by his co-defendants. *United States* v. *Kelly*, *supra*, 349 F.2d at 756. No such prejudice, however, existed here with respect to Drayer.

First, the evidence of Drayer's involvement in the massive scheme to manipulate the market price of Judo securities was far from "tenuous and unsubstantial." Drayer was convicted of one count of conspiracy (18 U.S.C. § 371), two counts of fraud in connection with the purchase and sale of securities (15 U.S.C. § 78j(b) and five counts of mail fraud (18 U.S.C. § 1341). The evidence demonstrated that Drayer, among other things, placed orders for approximately $250,000 worth of "wooden tickets" in order artificially to increase demand in Judo securities at the same time Corr was selling over $600,000 worth of Judo. While the Government

concedes that Corr was at the heart of the conspiracy and much of the proof offered at trial involved him, the activities of Drayer were vital to that conspiracy and he was not merely a "peripheral defendant." The evidence against him was sufficiently compelling to have clearly demonstrated his unlawful participation in the conspiracy and, accordingly, he cannot properly claim any substantial prejudice from the denial of his motion to sever. *See United States* v. *Aloi*, *supra*, 511 F.2d at 598; *United States* v. *Sperling*, *supra*, 506 F.2d at 1242 (2d Cir. 1974), *cert. denied*, 420 U.S. 962 (1975); *United States* v. *Cassino*, 467 F.2d 610, 622-23 (2d Cir. 1972), *cert. denied*, 410 U.S. 928 (1973); *United States* v. *Vega*, 458 F.2d 1234, 1236 (2d Cir. 1972), *cert. denied sub nom. Guridi* v. *United States*, 410 U.S. 982 (1973). In addition, having knowingly joined a single conspiracy, a defendant is not entitled to a severance merely because he was not a member of the conspiracy during its earlier stages. *United States* v. *Kessler*, 449 F.2d 1315, 1318 (2d Cir. 1971).

Second, this case differs from *Kelly* in that here there was some manifestation of the jury's ability to compartmentalize the evidence and distinguish among the various defendants. The jury declined to convict Barry Drayer, Drayer's brother, and on January 16, 1976, a mistrial was declared when the jury reported that as to Barry Drayer it was unable to reach a verdict. This fact alone tends to dispel Drayer's contention that he was improperly convicted. There is simply no reason to believe that any supposed "spill-over" of the evidence against Corr to his co-defendants would have affected Barry Drayer any less than Drayer. *See United States* v. *Papadakis*, *supra*, 510 F.2d at 300-01; *United States* v. *Baum*, 482 F.2d 1325, 1332 (2d Cir. 1973); *United States* v. *Jordan*, 399 F.2d 610, 615 (2d Cir.), *cert. denied*, 393 U.S. 1005 (1968).

...nally, careful jury instructions by the trial judge ...e often been held to alleviate whatever prejudice ...night otherwise have resulted from misjoinder of defendants. *United States* v. *Papadakis*, *supra*, 510 F.2d at 300; *United States* v. *Baum*, *supra*, 482 F.2d at 1332; *United States* v. *Kelly*, *supra*, 349 F.2d at 756-57. In the instant case, Judge Weinfeld clearly instructed the jury that the proof against Drayer was different from that against Corr and that each should be given separate and distinct consideration. It was emphasized that ". . . any evidence admitted solely as against one defendant and excluded as to others may be considered only as against that defendant as to whom such evidence was admitted and may not in any respect enter into your deliberations as to other defendants." (Tr. 5272-73).

CONCLUSION

The judgments of conviction should be affirmed.

Respectfully submitted,

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AFFIDAVIT OF MAILING

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

IRA LEE SORKIN, being duly sworn, deposes and says that he is employed in the office of the United States Attorney for the Southern District of New York.

That on the 14th day of July , 1976 , he served a copy of the within brief by placing the same in a properly postpaid franked envelope addressed:

Shea Gould Climenko & Casey
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New York, N.Y. 10017

And deponent further says that he sealed the said envelope and placed the same in the mail box for mailing at One St. Andrew's Plaza, Borough of Manhattan, City of New York.

Ira Lee Sorkin

Sworn to before me this

[illegible] day of July 1976

MARY E. AVENT
Notary Public, State of New York
No. [illegible]
Qualified in Bronx County
Cert. filed in Bronx County
Commission Expires March 30, 1977

AFFIDAVIT OF MAILING

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COUNTY OF NEW YORK) ss.:

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That on the 14th day of July, 1976, he served a copy of the within brief by placing the same in a properly postpaid franked envelope addressed:

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And deponent further says that he sealed the said envelope and placed the same in the mail box for mailing at One St. Andrew's Plaza, Borough of Manhattan, City of New York.

Ira Lee Sorkin

Sworn to before me this
14th day of July, 1976

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